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SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCO)

NOTICE OF ORGANIZATION MEETING

Wednesday, October 17, 2000 - 3:00 P.M.  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 263

NOTICE IS HEREBY GIVEN, that a meeting of the LAFCO is scheduled for 3:00 p.m., on October 17, 2000, in Room 263, City Hall, 1 Dr. Carlton B. Goodlett Place, for the purposes of selecting a Interim Chairperson, an Interim Executive Director, and accepting applications for the two public members and possibly appointing two public members to LAFCO.

Applications for the appointment to LAFCO is available by accessing the City's web site [www.ci.sf.ca.us/bdsupvrs/app](http://www.ci.sf.ca.us/bdsupvrs/app) or by contacting the Office of the Clerk of the Board at 554-7703. Applicants are encouraged to submit their applications by 5:00 p.m., on Friday, October 13, 2000.

At the October 17, 2000, meeting, LAFCO may interview persons interested in serving as the public members of the LAFCO for possible appointment.

The agenda for this meeting will be posted at City Hall, 2<sup>nd</sup> floor kiosk adjacent to Room 244 at least 72 hours prior to the meeting, the City's web site [www.ci.sf.ca.us/bdsupvrs](http://www.ci.sf.ca.us/bdsupvrs) and at the Government Information Center at the Main Library.

For further information, please call 415-554-7703.

GLORIA L. YOUNG  
Clerk of the Board of Supervisors  
City and County of San Francisco

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10/17/00  
Correction  
  
NOTICE OF CORRECTION

~~SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCO)~~  
~~NOTICE OF ORGANIZATION MEETING~~  
Tuesday, October 17, 2000 - 3:00 P.M.  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 263

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GLORIA L. YOUNG  
Clerk of the Board of Supervisors  
City and County of San Francisco

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SAN FRANCISCO  
LOCAL AGENCY FORMATION COMMISSION  
(LAFCO)

OCTOBER 17, 2000

The Minutes of this meeting are not available.



SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCO)  
NOTICE OF MEETING

Wednesday, October 24, 2000 - 3:00 P.M.  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 263

NOTICE IS HEREBY GIVEN, that a meeting of the LAFCO is scheduled for 3:00 p.m. on October 24, 2000, in Room 263, City Hall, 1 Dr. Carlton B. Goodlett Place. Several issues may be addressed at this meeting. 1) If the 2 public members have not been appointed at the October 17 meeting LAFCO will continue reviewing applications and interviewing interest persons, and may appoint two public members. 2) Adoption of the California Environmental Quality Act Guidelines, Conflict of Interest Code, policies, guidelines and procedures for the LAFCO and the processing of Municipal Utility District petitions, and 3) Approval of proposed LAFCO budget for transmittal to the Board of Supervisors.

The agenda for this meeting will be posted at City Hall, 2<sup>nd</sup> floor kiosk adjacent to Room 244 at least 72 hours prior to the meeting, the City's web site [www.ci.sf.ca.us/bdsupvrs](http://www.ci.sf.ca.us/bdsupvrs) and at the Government Information Center at the Main Library.

GLORIA L. YOUNG  
Clerk of the Board of Supervisors  
City and County of San Francisco

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*24/00*  
*Correction* NOTICE OF CORRECTION

SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCO)  
NOTICE OF MEETING

Tuesday, October 24, 2000 - 3:00 P.M.  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 263

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GLORIA L. YOUNG  
Clerk of the Board of Supervisors  
City and County of San Francisco

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OCT 13 2000

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Special

## SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCO)

**Special Meeting**  
Tuesday, October 24, 2000, 3 p.m.  
City Hall, Room 263

Members: Supervisors Ammiano, Bierman and Yaki

Clerk: Gail Johnson

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### SPECIAL AGENDA

(There will be public comment on each item)

OCT 20 2000

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1. Call to Order and Roll Call
2. Minutes of October 17, 2000
3. If two public members have not been appointed at the October 17, 2000, meeting the LAFCO will continue the acceptance of applications for two public members, presentations by applicants and/or question and answer session, and possible appointment of public members to LAFCO
4. Adoption of California Environmental Quality Act Guidelines, Conflict of Interest Code, policies, guidelines, and procedures for the LAFCO and the processing of Municipal Utility District petitions
5. Approval of proposed LAFCO budget for transmittal to the Board of Supervisors
6. Public Comment on Items Not on the Agenda
7. Adjournment

## DISABILITY ACCESS

Both the Committee Room (Room 263) and the Legislative Chamber are wheelchair accessible. The closest accessible BART Station is Civic Center, three blocks from City Hall. Accessible MUNI lines serving this location are: #42 Downtown Loop, and the #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call 923-6142.

There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex.

In order to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.





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San Francisco 94102-4689  
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**SAN FRANCISCO LOCAL AGENCY FORMATION  
COMMISSION (LAFCO)**

**SPECIAL MEETING OF OCTOBER 24, 2000,  
RECESSED TO**

**Tuesday, October 31, 2000, 3 p.m.**  
City Hall, Room 263

Members: Supervisors Ammiano, Bierman and Yaki

Clerk: Gail Johnson

**SPECIAL AGENDA**

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Minutes of October 17, 2000
3. If two public members have not been appointed at the October 17, 2000, meeting the LAFCO will continue the acceptance of applications for two public members, presentations by applicants and/or question and answer session, and possible appointment of public members to LAFCO
4. Adoption of California Environmental Quality Act Guidelines, Conflict of Interest Code, policies, guidelines, and procedures for the LAFCO and the processing of Municipal Utility District petitions
5. Approval of proposed LAFCO budget for transmittal to the Board of Supervisors

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6. Public Comment on Items Not on the Agenda

7. Adjournment

## DISABILITY ACCESS

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SAN FRANCISCO  
LOCAL AGENCY FORMATION COMMISSION  
(LAFCO)

OCTOBER 31, 2000

The Minutes of this meeting are not available.





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San Francisco 94102-4689  
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46  
1/21/00  
Special

## SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

**Special Meeting**  
**Tuesday, November 21, 2000, 3:00 P.M.**  
**City Hall, Room 263**

Members: Commissioners Ammiano, Bierman, Yaki, Choden, Eisenberg

Clerk: Gregoire Hobson

### SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Minutes of October 31, 2000
3. Adoption of the Appointment of Chairperson
4. Appointment of Executive Director
5. Adoption of Policies and Guidelines for Processing Petitions for the Formation of Special Districts (G. C. Section 56301)
6. Waiver of fee application for Municipal Utility District petitions
7. Public Hearing for review, discussion and action on the disposition of the petitions in support of the formation of a Municipal Utility District with the same exterior boundaries as the City and County of San Francisco and the City of Brisbane
8. Public Comment on Items Not on the Agenda
9. Adjournment

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## DISABILITY ACCESS

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SAN FRANCISCO  
LOCAL AGENCY FORMATION COMMISSION  
(LAFCO)

NOVEMBER 21, 2000

The Minutes of this meeting are not available.



SAN FRANCISCO  
LOCAL AGENCY FORMATION COMMISSION  
(LAFCO)

NOVEMBER 28, 2000

The Agenda and Minutes of this meeting are not available.



SAN FRANCISCO  
LOCAL AGENCY FORMATION COMMISSION  
(LAFCO)

DECEMBER 29, 2000

The Agenda of this meeting is not available.



San Francisco  
Local Agency  
Formation Commission

City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
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AUG 28 2001

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MINUTES

Special Meeting  
Friday, December 29, 2000, 3:00 P.M.  
City Hall, Room 263

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano, Bierman, Yaki, Choden

Clerk: Gregoire Hobson

SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 3:01 P.M.

Members Present: Commissioners Bierman, Choden, and Chair Eisenberg  
Members Absent: Commissioners Ammiano and Yaki

2. Approval of Minutes dated November 21, 2000 and November 28, 2000

Chair Eisenberg inquired if there were any comments regarding the minutes. The Commissioners held no discussion, and there was no public comment. The Commission adopted the minutes without objection.

3. Discussion and possible action on December 20, 2000, request by Coalition on Affordable Public Services for S.F. LAFCo to reconsider its action of November 28, 2000, adopting the Rule proposed by The Coalition for Lower Utility Bills that the Municipal Utility District Petition be referred directly to the Board of Supervisors to call an election on the MUD Petition and to divide the proposed District into Five Wards for purposes of electing directors.

## Public Comment

### Proponents:

James R. Sutton, San Francisco Coalition for Affordable Public Services, stated that he submitted a letter dated December 20, 2000, outlining the procedural requirements in state law that LAFCo should follow before a MUD can be placed on the ballot. The procedural requirements include (1) holding public hearings, (2) doing analyses of the fiscal impact of the proposed MUD, and (3) doing analyses of the economic and potential environmental impact. He indicated that it is premature to send the matter to the Board of Supervisors and to place the matter on the ballot when these procedural steps established by state law have not been performed.

Chair Eisenberg stated that the Executive Officer responded to Mr. Sutton in her letter dated December 21, 2000, that all this Commission did was to propose and pass a generic rule to direct the MUD petition back to the Board of Supervisors. As he understands both the positions of the Executive Officer and the City Attorney, Mr. Sutton is contending that the Commission made a determination and is requesting a rehearing. Because a determination was not made, the advice of the City Attorney and the Executive Officer is that Mr. Sutton's request for rehearing be returned to him and not accepted as an appropriate request.

Mr. Sutton stated that he received correspondence from the Executive Officer dated December 21. The letter did not refer to their request for a rehearing not being accepted. The Executive Officer did not ask for any action, did not tell them that they had to resubmit an application, or that there was a problem with their request—the letter was to simply point something out. He stated that the Executive Officer is making a distinction in the wording used in their letter, and the Coalition is drafting a letter in response. If there is a problem with their request for reconsideration, he would like it addressed.

Gloria L. Young, Executive Officer stated that Mr. Sutton's letter of December 20 indicated that the Commission approved the formation of a MUD in San Francisco and Brisbane pursuant to Government Code Section 56857. She clarified in her December 21 letter to Mr. Sutton that the Commission did not take action to approve the MUD petition pursuant to the Code. Rather, the Commission adopted a Rule proposed by Angela Alioto, Attorney for the Coalition for Lower Utility Bills (CLUB), that the general provisions of the Cortese-Knox Act pertaining to district formation do not apply to the formation of MUDs. The Commission had directed that the Clerk transmit the MUD petition in accordance with the Public Utilities Code to the Board of Supervisors to place on the ballot. In terms of LAFCo reconsidering the issue, it is a policy matter for the Commission.

Dorji Roberts, Deputy City Attorney stated that the Commission at its November 28 meeting adopted the Rule that was proposed by CLUB's attorney to the effect that



the general provisions regarding district formation that are set forth in the Cortese-Knox-Act do not apply. Staff then referred the MUD petition to the Board of Supervisors pursuant to the Commission's Rule that was adopted at the meeting.

Chair Eisenberg stated that it is his understanding that PG&E is asking the Commission to reconsider a determination, yet it is his opinion and the City Attorney's opinion that a determination was not made. What the Commission did was pass a Rule.

Dorji Roberts, Deputy City Attorney stated that the Commission at its November 28 meeting adopted a Rule that the Cortese-Knox Act pertaining to district formation does not apply. The Commission did not adopt a Resolution approving, disapproving, or taking any action on a MUD petition except to ask that staff direct the petition to the Board of Supervisors.

Chair Eisenberg stated that they were a new Commission struggling with their procedures and what was in front of them was the MUD petition. The Commission received at the last minute a request by CLUB through their attorney to consider a Rule. PG&E and their proponents said there was a violation of the Brown Act because the agenda only called for consideration of the MUD petition and that there was a new matter in front of the Commission. As a result, the Commission concluded that there was or might be a new matter within the terms of the Sunshine Ordinance and therefore continued the matter for a week. The Chair indicated that two separate issues were talked about--a Rule that the Commission passed and because the Rule was passed, they never got to the determination of the MUD petition.

Dorji Roberts, Deputy City Attorney stated that there was discussion at the November 21 meeting whether the proposed Rule had been properly agendaized and was therefore continued to the November 28 meeting. At that meeting, the Rule that was proposed by CLUB was adopted and the public hearing, which was on the agenda, was never discussed.

Chair Eisenberg stated that it is the City Attorney's opinion that the Commission did not make a determination on the MUD petition. Therefore, it is up to Mr. Sutton to convince the Commission that there is anything to reconsider, or that the LAFCo statute specifically allows the Commission to accept a request from an outside party to reconsider a rule of this Commission.

Mr. Sutton stated that the San Francisco Coalition for Affordable Public Services did not raise the issue about the Brown Act or the agenda problem. They are opposed to the fact that this Commission has decided that by adopting the Rule that they do not have to adhere to the law that requires a formal application, public hearings, and studies be done before going to the Board of Supervisors and scheduling an election. The law also requires that the Executive Officer prepare a comprehensive analysis of the merits and demerits of a MUD, none of which have been done. A

Superior Court ruling found that MUD is governed by Cortese-Knox, not by the MUD law. This is what the request for reconsideration is about. He asked why the Commission decided not to have a full public hearing on the merits and demerits of the MUD and the issues he stated before sending it to the Board. What is the point of a LAFCo if the Commission does not follow the statute in reviewing the technicalities of when new cities, agencies, or counties are created?

Chair Eisenberg asked Mr. Sutton to assume that the Commission would do an analysis of the MUD through the funds that have been appropriated to them. Would Mr. Sutton object to an analysis in the future?

Mr. Sutton stated that he would object if the Commission were to send the MUD petition to the Board of Supervisors to call for an election before doing the studies and hearings that are required by law. The State of California envisions going through a LAFCo before going to the Board and recognizes that setting up a new district or agency requires answers to technical questions. The Board of Supervisors and the voters will not have the benefit of a LAFCo analysis to make a determination. With a technical analysis, the voters would know that the State of California has protected their interests and studied the issue.

Chair Eisenberg stated that they are in disagreement about one point. The MUD Act does require the Executive Officer to provide an objective analysis, and it is incorrect to say that LAFCo will not have a role in further proceedings. The difference is that Mr. Sutton would prefer to proceed under Cortese-Knox, and this Commission prefers to proceed under the MUD Act. He stated that after the Board of Supervisors calls for an election, they would forward the petition to this Commission, and the Executive Officer should be prepared to issue an objective analysis.

Mr. Sutton stated that the disagreement is about timing and procedures. The study should be done before going to the Board. In addition, there has been no formal application from the proponents. The proponents have submitted a petition signed by 24,000 voters, and there should be an election, but the formalities of an application have not been submitted to the LAFCo.

Commissioner Choden stated that there is a rush in resolving the problems of power rates, power shortage, and power quality. PG&E shares this problem. He stated that LAFCo has the power as a County agency, not a City agency, to bring up the question of efficiency, efficacy, cost, and environment in regard to any City operation within its purview. Therefore, the issue of power and its possible venues regardless of who delivers that power are being studied. They know it is going to be expensive and time consuming, but it does not have to be. Commissioner Choden asked Mr. Sutton if he would support (1) sufficient funding to proceed expeditiously to an expert review of energy (2) the City's operation into energy in one venue or the other as possible joint powers, and (3) operation with the state or under the La Follette Act (which said in 1972 that leases were supposed to revert to public ownership).

Mr. Sutton stated that the San Francisco Coalition for Public Services would support LAFCo in obtaining sufficient funding to do what it is required by law to do. As a state agency, LAFCo is required to conduct these studies on the potential environmental impact of a MUD, the potential fiscal impact, demography, rates, and to show merits and demerits of a MUD before it goes to the Board of Supervisors and to the voters.

Commissioner Choden asked to put MUD aside and forget the process. It is agreed that LAFCo has specific duties regarding any government operation including the delivery of energy. We can have a study dealing with energy regardless of the specific venue and regardless of anybody else's proposal. He proposes that they proceed with the study and ask for PG&E's support.

Mr. Sutton stated that he is there on behalf of the San Francisco Coalition for Affordable Public Services. PG&E is one member and other members include public businesses and citizens. He disagreed with Commissioner Choden on the role of the LAFCo. LAFCos in the state are set up to process applications most commonly when cities want to expand, when cities want to take in unincorporated territory in its boundaries, or when a new district is proposed. The bounds of what the LAFCo can do are to study and spend public funds on what has been proposed to it.

Mr. Choden stated that he recommends that Mr. Sutton look at the alterations that have been made to LAFCo in the past two years. LAFCo has been broadened to deal with the streamlining of government and its operations. Mr. Sutton can then come back and agree that there is a joint and common purpose. LAFCo can initiate action without a proposal.

Commissioner Bierman asked if Mr. Sutton is representing PG&E as one of his proponents.

Mr. Sutton stated that he is representing a coalition of which PG&E is a member.

Commissioner Bierman asked if someone else is representing PG&E.

Mr. Sutton stated that PG&E had submitted a separate request for reconsideration on separate grounds that he believes is included in the agenda packet.

Commissioner Bierman stated that she believes that if Mr. Sutton is using PG&E's name as one of those he is representing, then he is representing them.

Chair Eisenberg stated that both Mr. Sutton's and PG&E's letter is regarding the same matter. He stated that the Commission would take joint testimony on both Items 3 and 4.

4. Discussion and possible action on possible appeal(s) or requests(s) for reconsideration that may be submitted to S.F. LAFCo prior to the December 29, 2000, meeting regarding its Rule, adopted November 28, 2000, that the MUD Petition be referred directly to the Board of Supervisors to call an election on the MUD Petition and to divide the proposed District into Five Wards for purposes of electing directors.

Lester Olmsted-Rose, representative of PG&E stated that he is not an attorney, but his letter was written to the Commission with the input of attorneys. State law has been set up to follow a process of openness in government, public participation, and for the Sunshine Ordinance. He does not feel that the Commission is following this process. LAFCo receives and studies applications to take action, and the Executive Officer reviews the matter. When that process is done, the Commission makes an independent public policy. He understands that LAFCo has a responsibility to respond to the citizens who have submitted a petition, but he does not know what the rush is. He does not understand why LAFCo has to circumvent state law in processing the application, and they are asking LAFCo to follow the procedures set forth in state law.

Commissioner Bierman asked the City Attorney if the Commission is circumventing something that should not be circumvented.

Dorji Roberts, City Attorney stated that there are two differing views with respect to whether this Commission must go through the substantive review set forth in the Cortese-Knox Act which Mr. Sutton referred to, or the view that the Commission took at the November 28 meeting that the provisions of the MUD Act set forth in the Public Utilities Code govern the formation of a MUD. He is not allowed to disclose in open session the confidential advice that he has given to the Commission on this matter.

Chair Eisenberg stated that he has combined Items 3 and 4 and has allowed the Coalition for Affordable Public Services and PG&E to state their position. He asked if there is someone on the other side that would like to state their position, and if Mr. Sutton had completed their side's testimony at this time.

Mr. Sutton stated that the court had ruled that the Cortese-Knox Act governs the MUD formation despite this Commission's adoption of a Rule that it is not Cortese-Knox, but the MUD law. As Chair Eisenberg and he have mentioned, there is a provision in the MUD law, which says that the Executive Officer of LAFCo shall submit to the Commission for its approval and modification an Impartial Analysis to propose district formation. Even the MUD law, which is not what state law requires, has a requirement for an Impartial Analysis, although it does not go into the specifics of what the Impartial Analysis should entail.



Chair Eisenberg stated that it is a timing question. Mr. Sutton believes the Impartial Analysis should be done now, and the Commission has a Rule that says it should be done later. He asked for testimony from those who oppose the reconsideration.

Richard Ow, Coalition for Lower Utility Bills (CLUB) stated that the 24,000 people who have signed the petition foresee that electric rates are going up. Most of the members of the new Board of Supervisors support the MUD petition. The State Municipal Commission held a hearing that thousands of people attended and watched on television and listened to on radios. The San Francisco citizens are well informed and disgusted with the 26% increase that PG&E is going to add to the electric bills. There are too many poor people in this City that cannot afford the current rate. He is urging the Commission to speed this ahead so the Board of Supervisors will call an election date to settle this problem.

Ernestine Weiss stated that she agreed with the former speaker's comments. It is important that the Commission act now because of the pressure of the increase in PG&E rates. It is frightening to the seniors who are faced with huge bills that they cannot afford. The rents are high enough, and they cannot absorb anymore. PG&E has all the money in the world--it is inappropriate for them to say that they are losing money when they are hiding the money in the parent-corporation. MUD is a better way—Sacramento, Los Angeles, and other cities have benefited by it. She recommended going ahead with the MUD expeditiously.

Don Paul, Coalition for Lower Utility Bills and Housing as a Human Right stated that there has been plenty of time for public input since the petition passed with more than 24,000 signatures. There have been several public hearings where the public could freely speak. There is a window of two weeks before the first Board of Supervisors meeting, and he would think that the Executive Officer could probably prepare a report to inform the Board of Supervisors before then. It could then move forward as the public wishes. In order to answer the question as to why there is an urgency in processing the petition, you have to read the newspaper or look at your public utilities bill.

Paul Goerke, previous Brisbane Mayor and previously on the Brisbane City Council stated that he went through experiences with LAFCo while in these previous positions. The reference was made by another speaker that it was LAFCo's job to study the areas to be involved, not the issues of all the effects of the changes excepting to do with the additional properties that have to be added in unincorporated areas. It is that area that LAFCo involved itself, not all the details as to who or how much it would cost. He recommended that LAFCo follow the MUD Rule that refers to LAFCo and what it is supposed to do. Let any other details follow and go parallel until the time of the election that will give the Commission time to do any studies anyway.

Marie Harrison stated there has been enough in the papers and the news and enough people that are well informed in order for the MUD to move forward. What

is happening here is that you have an entity (PG&E) that has long been in the community that has been in charge too long. She recommended that the Commission proceed with the process.

Bruce Brugman, Editor and Publisher of the Bay Guardian stated that he has been working on this issue since 1969, and he wanted to thank Supervisor Bierman for an outstanding career in public service. It is particularly fitting that she is from the State of Nebraska that has public power, and that one of her last meetings is here in LAFCo deciding whether PG&E or the public would use the power system in the City and County of San Francisco. The PG&E attorney stated that LAFCo is acting as an outlaw worried about rushing this item through. PG&E is suddenly crying for Sunshine. This issue has been on the table since 1913, and PG&E has moved again to keep San Francisco from having its own Hetch Hetchy public power system which was mandated by federal law, by the US Supreme Court, and by the City Charter. Bruce Brugman recommended that the Commission proceed.

David Dauty stated that Mr. Sutton represents the Coalition for Affordable Public Services. By affordable, he assumes that Mr. Sutton is opposed to an increase by PG&E. He would like the Chair to ask him if he is opposed to the rate increases or not. Because the question of legality has been raised, he read the Raker Act and asked whether PG&E believes in obeying the law.

Public Comment Closed on Items 3 and 4

Chair Eisenberg proposed a Resolution to direct the Executive Officer to return the correspondence received from the Coalition on Affordable Public Services and PG&E to the authors informing them that their request for reconsideration is not accepted in view of California law. The findings for that Resolution are as follows and they are taken from the report of the Executive Officer.

1. The Commission did not take action to approve the MUD petition pursuant to Government Code Section 56857. Rather the Commission adopted Rules proposed by Angela Alioto, Attorney for the Coalition for Lower Utility Bills to the effect that the general provisions in the Cortese-Knox Act pertaining to district formation do not apply to the formation of MUDS. In addition, the Commission directed staff to transmit the MUD petition to the Board of Supervisors to call an election for the formation of MUD and to divide the proposed districts into five wards from which to elect directors.

The additional finding will be the statement of the City Attorney:

2. The prior action of this Commission did not constitute a determination, but rather constituted a Rule within the rule-making powers of this Commission. Therefore, it is not appropriate to accept either request for reconsideration.

Commissioner Bierman stated that she is prepared to approve this Resolution. She made a few comments about the weather, people's health, and all things she is not sure PG&E have at the top of their agenda. There are many people who will be in danger of having their heat shut off in this City because they won't be able to absorb the rate increase. As Mr. Brugman stated, she comes from Nebraska and they had public power. It was a shock to her that anybody else was so unlucky to not have public power. She does support the MUD petition, and it will be her displeasure that she will not be here to work on the Board of Supervisors. Luckily, some of the new members are as involved in caring about people's lives.

Chair Eisenberg stated in simple language that this Resolution means that there has been disagreement as to what happens when someone puts a petition before the Board of Supervisors. Different courts have ruled in different ways. Reasonable people can disagree. What has happened is that the MUD petition was sent to this Commission, and this Commission ruled that the election would proceed without delay. Pursuant to state law, had there been a determination by this Commission, anyone would have had the right to ask for a request for reconsideration. However, there wasn't a determination--there was a Rule determining the legal method of how a MUD would proceed. He would like the Executive Officer to emphasize to the Board of Supervisors that thirty days ago this Commission stated to proceed without delay. The LAFCo has said to call an election and put it on the ballot. The Commission would now clear the last legal hurdle in proceeding with the election by approving this Resolution.

VOTE:

AYES: Commissioners Bierman and Choden and Chair Eisenberg

NOES: None

ACTION: Resolution with findings as stated passes unanimously without objection.

Chair Eisenberg stated that the Commission would ask the Executive Officer to transmit the information of the passage of the Resolution with a statement to the Commission that there are no further procedural barriers to the election at this time pending before LAFCo.

Chair Eisenberg announced that today was Commissioner Bierman's last meeting with LAFCo because this was her last term in office. He read a poem in her honor and commended her for the magnificent work she has done for the Commission.

Commissioner Choden stated that he would not be a member of LAFCo after this year. State law requires one public member, and he deferred to Chair Eisenberg. He thanked everyone and stated that he would continue to support the goals of the Commission. He read a memorandum as to where he thought LAFCo should go.

1. He thinks the service boundaries need to be changed in an additional ballot to exclude a time-delaying inclusion of San Mateo County and its entities. There is the possibility of voluntary inclusion and joint power agreement. He does not think it is crucial, but it is challengeable in court and could delay implementation.
2. The La Follette Act is a federal act that required the dam leases enjoyed by PG&E and Southern Consolidated Edison to revert their leases back to public ownership back in 1972. Those leases may have been illegally renewed without much opposition. There is a question whether one can sell leases that one does not own. Now, they are facing a crucial power shortage, rate increases, and quality of power. He has nothing against the continuance of PG&E as an entity. It would seem now that this is a question of discourse and discussion between everyone to deal with the dam leases for the purpose of generating public power in a repaired condition that is more environmentally respectful.
3. LAFCO's power has been broadened beyond the question of petition and application. It is a streamlining agency that deals with efficiency, efficacy, costs, and the environment. It has the power to review all local government entities, and it can initiate the review. It can do so for MUD, for the Airport, and for MUNI. There is no entity in the City's government that coordinates plans for the operation of City government in an efficacious manner. Therefore, LAFCo is a state-created agency for the County, not the City, and has the power to oversee and evaluate the operations of City government.
4. Planning. He suggests that LAFCo have a permanent evaluation and Planning staff and a consultant budget. The purpose is for providing the Supervisors and the Administration or any other city within their purview with the constant evaluation and long-term planning to guide the City's operation and capital funding. You cannot have a planning agency within an administration that both plans and enforces the laws. It is a professional and moral conflict of interest. That is one reason there is a permit-staffing agency with no planning expertise

Chair Eisenberg asked Commissioner Choden if he is tendering his resignation at this time.

Commissioner Choden stated that he would be resigning effective December 31, 2000.



5. Public Comment on Items Not on the Agenda.

Richard Nee stated that he speaks without prejudice on the discussion today. He is representing San Franciscans for Sunshine, the organization whose initiative resulted in 58% passage last year of a strengthening of the City Sunshine Ordinance. He is also the past president of the Society of Professional Journalists in the Northern California Chapter. He was president of the Chapter when the drafting of the original Sunshine Ordinance was begun and that was at the chapter's behest. San Franciscans for Sunshine were pleased when it was noticed at the last meeting that there would be a Resolution to abide by the San Francisco Sunshine Ordinance, and they are puzzled as to why it is not on today's agenda. He urges the Commission to act as soon as possible to declare in strong definitive language that the Sunshine Ordinance is a policy for the LAFCo members and staff. Big government is not the problem, secret government is.

Chair Eisenberg stated that they have adopted the policies informally.

Richard Nee recommended adopting the policies formally.

Chair Eisenberg stated that the Sunshine Ordinance should be adopted formally and had asked the Executive Officer to place the item on the next agenda.

Gloria L. Young, Executive Officer recommended the meeting be held on January 23, 2001, at 3:00 p.m. and that it may have to be moved to February. The new Supervisors as well as the reelected Supervisors are in the process of being surveyed with respect to their desire to serve on LAFCo, and that process needs to go through the Rules Committee. It will take some time before there is an appointment to LAFCo by the Board of Supervisors.

5. Adjournment. The meeting adjourned at 4:12 p.m.







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**AGENDA**

Note: Each item on the Consent or Regular agenda may include the following documents:

- 1) Legislation
- 2) Executive Officer report
- 3) Legislative Analyst report
- 4) Public correspondence

These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting  
March 1, 2001, at 10:00 A.M.  
City Hall, Room 263**

Chairperson: Eisenberg

Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick

Clerk: Gregoire Hobson

**SPECIAL AGENDA**

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Adoption of the Sunshine Ordinance with suggested modifications by Chairperson Neil Eisenberg (**Citizens interested in obtaining a free copy of the Sunshine Ordinance can obtain a copy by printing Chapter 67 of the San Francisco Administrative Code on the Internet at <http://www.ci.sf.ca.us/bdsupvrs/sunshine.htm>**)
3. Approval or modification of the Executive Officer's Impartial Analysis on the Creation and Maintenance of a San Francisco-Brisbane Municipal Utility District



4. Possible action regarding Supervisor Gonzalez's legislation requesting the SF LAFCo to take such action as it deems appropriate with respect to the creation and maintenance of the San Francisco-Brisbane Municipal Utility District
5. Public Comment on Items not on the Agenda
6. Adjournment

### IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

### **DISABILITY ACCESS**

Both the Committee Room (Room 263) and the Legislative Chamber are wheelchair accessible. The closest accessible BART Station is Civic Center, three blocks from City Hall. Accessible MUNI lines serving this location are: #42 Downtown Loop, and the #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call 923-6142.

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In order to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

### Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall; by mail to Clerk of the Board of Supervisors, 1 Dr. Carlton B. Goodlett





Place, Room 244, by phone at (415) 554-7724, by fax at (415) 554-5784 or by email at Donna\_Hall@ci.sf.ca.us

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.ci.sf.ca.us/bdsupvrs/sunshine.htm>



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## MINUTES

Special Meeting  
Thursday, March 1, 2001 at 10:00 a.m.  
City Hall, Room 263

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Gregoire Hobson

### SPECIAL AGENDA

(There will be public comment on each item)

#### 1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 10:08 a.m.

Members Present: Chair Eisenberg, Commissioners Ammiano, Daly, Maxwell, and McGoldrick

Members Absent: None

- #### 2. Discussion and possible adoption of the Sunshine Ordinance with suggested modifications by Chairperson Neil Eisenberg (Citizens interested in obtaining a free copy of the Sunshine Ordinance can obtain a copy by printing Chapter 67 of the San Francisco Administrative Code on the Internet at <http://www.ci.sf.ca.us/bdsupvrs/sunshine.htm>.)

Gloria L. Young, Executive Officer, stated that the Sunshine Ordinance is before the Commission. It is her understanding that Chair Eisenberg may introduce a Resolution, and if the Commission concurs, the item would be continued to the next meeting to allow the public to see the wording of the Resolution.

Chair Eisenberg asked if the Commission is bound legally by the Sunshine Ordinance since it is an agency created by state law.

Gloria L. Young, Executive Officer, replied that SF LAFCo is not bound by the Sunshine Ordinance.

Chair Eisenberg stated that there are technical reasons that it would be difficult for the Commission to comply with the Sunshine Ordinance dealing with written documentation that would not be substantive in any way, and that is one reason for the Resolution. The Resolution before the Commission states that LAFCo would be adopting the spirit of the Sunshine Ordinance and attempt to comply with it in all regards, but would not be adopting it. He believes the Commission's focus for the next year will be the energy crisis, and that we are going to have many detailed and complicated questions and answers. The objection he has is that the Sunshine Ordinance specifies equality in testimony. If we announce that we will give people three minutes to speak, we cannot give somebody else five minutes to speak because that is the requirement of the Ordinance. Given the complexities of the energy crisis, it may be difficult for someone to state the issue within three minutes or five minutes, and the speaker may want to extend the time. A proposed Resolution was put together that commits SF LAFCo to the Sunshine Ordinance, but allows the Executive Officer not to have to comply with the technical paperwork that is cumbersome for the Commission. It also allows the Chair room to allow further discussion, rather than less discussion.

Commissioner Ammiano stated that the Chair has reached an equitable compromise and that we are all committed to the Sunshine Ordinance. As he understands the Resolution, the Commission will be embracing the principles of the Ordinance with technical adjustments on the amount of time testimony is allowed. For other Committees, the City Attorney is clear about the time limit once it has been established. Only people who are staff or work for departments can make a presentation, and we would have to give less time to Public Comment. He asked if the Sunshine Ordinance Task Force has been informed about how SF LAFCO was proceeding?

Chair Eisenberg replied that since City law does not bind LAFCo, the Sunshine Ordinance Task Force was not yet informed, but should be in the future. The Chair asked that the Executive Officer convey to the Sunshine Ordinance Task Force that the only reasons to pass the Resolution would be to broaden discussion and possibly expedite things in view of the fact we are in an energy crisis.

Gloria L. Young, Executive Officer, will confer with Donna Hall, Administrator of the Sunshine Ordinance Task Force, that this is the intent of the Commission and have her relay this information to the Sunshine Ordinance Task Force.

Chair Eisenberg asked if the Commission could vote on the Resolution today?

Gloria L. Young, Executive Officer, stated that we could not vote on the Resolution today. Another important factor is that the Sunshine Ordinance requires a 72-hour

notice for special meetings. In an emergency, you may need to meet within 24 hours, and the Brown Act only requires 24 hours notice for special meetings. The Executive Officer stated that she would return with the Resolution at the next meeting for adoption.

No Public Comment

Chair Eisenberg moved to continue this item to the next meeting; seconded by Commissioner Daly. There was no objection.

Unanimously Passed.

3. Approval or modification of the Executive Officer's Impartial Analysis on the Creation and Maintenance of a San Francisco-Brisbane Municipal Utility District.

Gloria L. Young, Executive Officer, stated that an Impartial Analysis has been prepared in accordance with Public Utilities Code (PUC) Code Section 15762.1. The SF LAFCo may approve or modify the analysis. Upon its approval, she will submit the Impartial Analysis to the Department of Elections. The analysis meets the 500-word limit required by the Department of Elections.

Chair Eisenberg asked the Executive Officer to read the analysis onto the record.

Gloria L. Young, Executive Officer, read the proposed Impartial Analysis.

Public Comment:

Clay Holstein, City Manager, City of Brisbane, San Mateo County. The only comment he would make is relative to the last paragraph in the proposed Impartial Analysis, and to indicate that they concur with the writing and the effect of this language.

Public Comment Closed.

Chair Eisenberg stated that it appears to him that the comment made by the City of Brisbane City Manager suggests that the last paragraph of the Impartial Analysis might be making a legal conclusion, rather than stating the law. Chair Eisenberg asked the Executive Officer what statutes were cited in the Impartial Analysis.

Gloria L. Young, Executive Officer, replied that Sections 11561 and 11652 were cited.

Chair Eisenberg asked whether it would be more appropriate to cite the words of the statute rather than to paraphrase in the last paragraph of the Impartial Analysis?

Gloria L. Young, Executive Officer, replied that she would defer to the Commission.

Chair Eisenberg stated that there are two differing interpretations of Section 11652 and asked the Executive Officer whether she was taking the City Attorney's opinion that you need both the majority voters in Brisbane and in San Francisco to create a MUD?

Gloria L. Young, Executive Officer, stated that she took the opinion she stated on the Impartial Analysis because the petitions when they were first circulated had to be re-circulated to include the City of Brisbane. It is her opinion that the measure would require a majority vote of both San Francisco and Brisbane to pass, but that is up to the Commission to revise the Impartial Analysis accordingly.

Chair Eisenberg asked if the City Attorney reviewed the Impartial Analysis.

Gloria L. Young, Executive Officer, replied that the City Attorney did look over the Impartial Analysis, but had kept what she wrote because in her opinion it had to be the Executive Officer's analysis.

Commissioner McGoldrick asked that Section 11652 be read.

Gloria L. Young, Executive Officer, read Section 11652.

Commissioner McGoldrick asked whether it would be possible to retain the last paragraph and then add in parenthesis what law states.

Chair Eisenberg stated that Section 11652 is subject to two varying interpretations, and the proposed Impartial Analysis takes the City Attorney's interpretation. He stated that the fair way is to simply state state law and let the voters decide what it means. He interprets the statute to say that if you have a majority of voters in the district and the district consists of San Francisco and Brisbane, then under those circumstances whether or not Brisbane is in concurrence, Brisbane becomes part of the district. The last paragraph of the Impartial Analysis interprets the statute to say that Brisbane can veto the entire project, and he doesn't believe that is Special District law. The last paragraph contains a legal opinion, and the Executive Officer would have no problem removing it. Chair Eisenberg asked to count the number of words in the state law to see if it would exceed the 500-word limit if it would replace the last paragraph.

Gloria L. Young, Executive Officer, stated that the state law contains 92 words, and with the phrase that she has so far the count is 31, so the word count is less than 500. The word count was printed from the Election Code.

Chair Eisenberg moved to amend the Impartial Analysis to take out the last paragraph and add the words of Section 11652. Commissioner McGoldrick seconded.

Gloria L. Young, Executive Officer, indicated that she would add "In accordance with Public Utilities Code, Section 11652..." to the amendment.



Chair Eisenberg asked to reopen Public Comment on the amended Resolution.

Harold Toppel, City Attorney for the Brisbane, stated that Section 11652 is clear in that it says that the vote of each jurisdiction has to be separately canvassed and separately counted, and there has to be a majority vote to create a MUD. He asked if there is legal authority to support the argument that Brisbane's separate vote doesn't count, and he has yet to be given any authority to support that position. One of the responsibilities of the Impartial Analysis is to advise the voters as to the type of vote required for the passage of a measure, whether it is majority or two-thirds vote, etc. He thinks the Impartial Analysis has to take a position. If the Commission is going to abide by the position that the vote of Brisbane does not count, then LAFCo is inviting litigation after the measure passes. They would want this issue determined before the election. If this Commission is unable to do that, then it will be up to the Brisbane City Council, if they desire to do so, to bring the issue to a Court to get a clear clarification. He requests that the Commission retain the language as originally proposed by the Executive Officer.

Jim Sutton, the Coalition for Affordable Public Services, the Committee set up to oppose the MUD initiative stated that they concur with the Brisbane City Attorney and with CLUB, the proponents of the MUD initiative. CLUB originally gathered signatures just in San Francisco and then figured out that they needed at least two public entities to create a MUD. They then re-circulated the initiative in San Francisco and Brisbane. CLUB then determined what the City Attorney and Ms. Young determined that unless a majority of voters in San Francisco and Brisbane vote for this MUD, there would be no MUD. Mr. Sutton stated that if you are going to include language from state law in the amendment, language from Section 11561 has to be included because that is the crucial section. Section 11561 states that in order for there to be a MUD, you have to have at least two public entities. In other words, if Brisbane votes the measure down, you are left with one public agency, the City of San Francisco. The purpose of the Impartial Analysis is not to restate the law, but to put the law into terms that the voters can understand. He would urge the Commission to reject this amendment to the Impartial Analysis and keep it as the Executive Officer has drafted.

No further Public Comment. Public Comment closed.

Chair Eisenberg asked if the Executive Officer has any problem with citing the words of the statute?

Gloria L. Young, Executive Officer, stated that she would defer to the Commission.

Chair Eisenberg stated that the prior public speaker misstated the position of the public power advocates. The history of the present petition was that the City Attorney was in fact of the opinion that there needed to be two entities to pass the MUD initiative, so CLUB withdrew the San Francisco petition and added Brisbane. CLUB has never taken the position that Brisbane could be a veto power, and CLUB has never taken the position of the last paragraph of the Impartial Analysis. The last paragraph is the City Attorney's opinion, and there has been a substantial argument

as to the interpretation of the statute. The speakers have suggested that this Commission take a stand as to whether Brisbane's vote could stand as a veto power. As an advocate of public power, Chair Eisenberg suggests it is inappropriate to take a stand on a legal interpretation, when it is the Executive Officer's job to state the law as best as she can. He doesn't think it would be appropriate for the Executive Officer to take one side or the other.

Commissioner McGoldrick stated we might want to continue this item to discuss whether or not to keep the language that the Executive Officer drafted and to cite the Code Section.

Chair Eisenberg stated he would not want to keep the language as drafted because it may be argued that this Commission took the position that the City Attorney's opinion is correct. There is a strong argument that the City Attorney's opinion is wrong, and it is possible that this Commission may want the opposite interpretation. He does not think that the Commission can simply lay out the law to the public, but the Commission can give an objective statement that is interpretation free. If the amendment is accepted, the voters will have to decide what the wording means and he thinks the law requires LAFCo to do that.

Commissioner Daly asked if the Commission could choose to interpret the law in this situation and draw it out for the voting public and include language that there is ambiguity, or there is debate that exists about what the law means.

Chair Eisenberg stated that he thinks this would confuse the voters.

Public Comment reopened.

Clay Holstein, Brisbane City Manager, stated that the City of Brisbane's interest is in their own sovereignty for their community. They do not want to be the veto to the will of the people of San Francisco. If San Francisco wishes to choose to form a district for public power, then they want San Francisco to be able to do that. The City of Brisbane has been placed in this position, but does not want the role. They want to be able to vote to choose whether they want to participate or not.

No further Public Comment. Public Comment closed.

Commissioner Maxwell asked that the Commission look at Brisbane as a neighborhood or community--their concerns are important. She is concerned as to what LAFCo is giving the voters because of the varying interpretations. She is not opposed to taking more time on the issue and to give people something that they can understand.

Chair Eisenberg asked the Executive Officer for the timing of the ballot as we are talking about an objective analysis that will appear on the ballot.



Gloria L. Young, Executive Officer, stated that according to Code, she has to present the Impartial Analysis to the Commission within five days of her writing it. The City Attorney could advise the Subcommittee as to further timeframes.

Paula Jesson, Deputy City Attorney, stated that the Code (MUD Act 11643.1, last paragraph) requires the Executive Officer to present the Impartial Analysis to the Commission within five days. The Code also specifies that this Commission is to act within five days. There are two consequences if you fail to comply with time requirements of statutes. One possible consequence is that you lose jurisdiction. If you do not take action within a certain amount of time, you can no longer act on it. The other consequence is that somebody could get an order to compel you to act by writ. She thinks you could continue the item as long as you do not wait too long to jeopardize the printing of the ballot. In addition, she wants to make sure that the Commissioners comply with the last paragraph of the Code, which states that a Local Agency Formation Commission must act within five days after receipt of the Executive Officer's Analysis.

Chair Eisenberg stated that the date for the meeting is within five days of receipt of the Impartial Analysis. If people want to propose alternative wording, it should be received by March 2, 5:00 p.m. at the Board of Supervisors Office, so a copy can be available at the Front Counter of the Clerk's Office by Monday morning.

Commissioner Maxwell motioned to continue this item for further clarification; Commissioner Ammiano seconded.

Chair Eisenberg after discussion and consensus of the Commissioners moved to continue this item to March 6, 9:00 a.m., asked the City Attorney to attend the meeting, and stated that a quorum would be in place.

4. Discussion of Supervisor Gonzalez's legislation requesting the SF LAFCo to take such action as it deems appropriate with respect to the creation and maintenance of the San Francisco-Brisbane Municipal Utility District.

John Henry Pierce, Supervisor Gonzalez's office, stated that there have been questions raised as to what procedures LAFCo has to follow, and there is a difference of opinion. There is a second and duplicate MUD petition that was created by the Board of Supervisors and sent to this Commission for their consideration.

Chair Eisenberg asked how Supervisor Gonzalez's office wants LAFCo to proceed on the Resolution. Should the Commission wait to see if MUD1 is knocked out in court or proceed on parallel grounds?

Supervisor Gonzalez stated that they do not have a proprietary interest in this legislation and welcomes other input. They have spoken to the City Attorney and are confident that the City Attorney is working in good faith in putting this together. Discussion about the original petition that has now gone to the voters should be here and the Commission should do some of the things that have been recommended.

We should make determinations about CEQA review. LAFCo should ask the City Attorney what their advice is on the new legislation. The Commission may want to question whether LAFCo should adopt new rules that would not require sending matters such as this to the Board of Supervisors and would allow LAFCo to send these types of matters directly to the voters. Once this body conducts the review that the City Attorney thinks is necessary, LAFCo may not need to put it on the ballot because the actual petition itself may be identical to what is going to the voters.

Chair Eisenberg stated that there are provisions in the Cortese-Knox Act that says that LAFCo has exclusive jurisdiction over the creation of districts and that we can take a petition and change or reorganize it. He asked if Supervisor Gonzalez was aware of the LAFCo powers in this regard?

Supervisor Gonzalez concurred and stated that they are not appearing here to tell the Commission not to change anything.

Chair Eisenberg inquired whether the legislation was replicating MUD1, and if the difference is that it is by way of a Resolution instead of a signature petition?

Supervisor Gonzalez concurred.

Chair Eisenberg asked if this Commission, at Brisbane's request, could take Brisbane out of Supervisor Gonzalez's petition and perhaps seek another agency that would thereby meet the requirement of two agencies and satisfy some of the objections of Brisbane?

Supervisor Gonzalez stated that it would conform to his opinion of the need for having two agencies engaged in the MUD proposal, but he thinks that the City Attorney should be consulted. He thinks the primary purpose of why this legislation was introduced was for LAFCo to retain the opportunity to do the review that there was so much discussion about.

Chair Eisenberg asked if the Commission should proceed and take into consideration the technical objections that were made against MUD1? Since the Commission has a new amended Cortese-Knox-Hertzberg law in 2001, should the Commission proceed with the advice of the City Attorney as how to process the Resolution? Would Supervisor Gonzalez be amenable to this Commission taking into consideration the objections and somehow structure a better MUD?

Supervisor Gonzalez concurred. He stated that if the MUD looks different than the one on the ballot, the Commission would need the City Attorney's advice as to how to recall the first item to the voters. He expects LAFCo to decide whether to have just the second measure or have both competing measures on the ballot.

Commission McGoldrick asked if there is a difference between cities and agencies.

Chair Eisenberg stated that the statute makes reference to agencies. The City is an agency and so there is a broad range as to what the City of San Francisco can join

in with to form a MUD. It does not have to join in with Brisbane—it could join in with Hetch Hetchy or Treasure Island. It is not necessary for the City to join in with a City.

Public Comment:

Harold Toppel, City Attorney, City of Brisbane stated that Section 11561 is clear and that San Francisco may join in with another agency or unincorporated territory—it does not have to be a separate City jurisdiction. Brisbane would support any alternative San Francisco may have without getting Brisbane involved in the process. The City of Brisbane is having a problem with the attempt to nullify their sovereignty. They feel that they have the right to vote on this issue as a separate entity as state law requires. They are happy to work with San Francisco to support their own formation of an electrical power company, and they urge the Commission and Board of Supervisors to pursue other alternatives other than Brisbane.

Chair Eisenberg asked the speaker if it is possible that the citizens of Brisbane might want to participate in a MUD? If he is positive that the vast majority of Brisbane would not want to be part of the MUD, could he advise the Commission as to how he thinks the City of San Francisco might use a City agency? Mr. Toppel might want to write a letter to this Commission as to how his request might be honored through another measure.

Clay Holstein, Brisbane City Manager stated that Supervisor Gonzalez's Resolution would open up dialogue that the City of Brisbane can partake in to see how all of this can come together. Perhaps there may be a measure between San Francisco, Brisbane, and another entity. Then the issue of the sovereignty of their vote becomes moot, San Francisco can move forward, and Brisbane can decide whether it wants to partake or not. There probably is an interest in the people of Brisbane's part to debate the issue and be involved in the discussion.

Public Comment closed.

Gloria L. Young, Executive Officer, stated that the Commission has received the Resolution from the Board of Supervisors, which was sponsored by Supervisor Gonzalez. State law allows the Board to initiate the MUD formation process by adopting a Resolution that declares public interest and necessity for the MUD and referring it to this Commission.

Her first step as the Executive Officer would be to provide notice of the proposal to form a municipal utility district to interested agencies and determine whether the application is complete or requires additional information. If additional information is needed, she can ask the Board of Supervisors to provide it or take the necessary steps to obtain it on behalf of the Commission. In addition, the Executive Officer can arrange for an environmental review. Once the application is complete, a hearing would be scheduled within ninety days, and she would provide the Commission with a report prior to that hearing. State law also provides that if the Commission approves the proposed MUD, it would send the matter back to the Board of

Supervisors with a request of the Board to direct the election officials to conduct an election.

At the present time, the Commission has received proposed Rules that the Executive Officer submitted in October/November. These Rules are under review by Chair Eisenberg and herself. She would suggest that the Rules be placed before the Commission at a future meeting so that they can adopt the Rules that would apply to the Resolution by Supervisor Gonzalez.

Chair Eisenberg and the Executive Officer agreed to put the Rules on the agenda for a future date.

No Action Taken.

#### 5. Discussion of a proposed scope of work for a Sphere of Influence Study.

Gloria L. Young, Executive Officer, stated that the Commission at its November 28, 2000 meeting recommended that she develop a scope of work and a budget for a Sphere of Influence Study. Although there is no written report today, feedback is requested so she could provide the Commission with a formal recommendation at the next meeting. The scope of work is the feasibility study needed to provide answers to the following questions: what are San Francisco's options for the cost and benefits analysis for generation, transmission, and distribution of electric power?

The Executive Officer recommends that the Commission allow her to use an informal process to secure a consultant rather than the formal RFP process which could take up to four months. The informal process would allow her to formulate a list of consultants to send the scope of work and specifications to, and request a proposal by a set date. The list would be made up of experienced consultants with background in public power and consumer advocacy and possibly joint action agencies made up of municipalities such as the Northern California Power Agency or CMUA, the California Municipal Utilities Association. A time period could be set for developing the list of potential consultants that would allow the public, you as a Commission, staff, etc. to provide her with names and firms. She could either bring the proposals back to the Commission, work with the Subcommittee of the Commission, or be authorized to set up a process for review and enter into a contract to proceed with the work, or some combination of the above. Most of the other LAFCO's in the state operate in this way. If the Commission decides to proceed in this direction, she would request that the Board of Supervisors release the reserve of funds that they currently have for SF LAFCo.

Commissioner McGoldrick inquired as to the amount of the reserve funds.

Gloria L. Young, Executive Officer, stated that the reserve funds are a little over \$600,000.

Commission McGoldrick asked if the Executive Officer knows what amount would have to be released at the Board of Supervisors?



Gloria L. Young, Executive Officer, stated that she has an approximate number for what it would cost for the consultant, but that LAFCo would also need to provide dollars for the environmental review. She would suggest that the full amount be unreserved and that she would come back to the Commission with the budget recommending an amount for each one of those services.

Commissioner McGoldrick asked who would be doing the environmental review?

Gloria L. Young, Executive Officer, stated that they would submit environmental review to the Planning Department unless there is another recommendation.

No Public Comment.

Gloria L. Young, Executive Officer, stated that formal action cannot be taken because there is nothing before the Subcommittee, but she can come back with the proposed scope of work at the meeting following the March 6 meeting. At that time, she will propose to the Commission what she has outlined in terms of a list.

Chair Eisenberg stated that the Executive Officer is proceeding properly and to advise LAFCo at the next meeting.

No Action Taken.

6. Public Comment on Items not on the Agenda

No Public Comment.

7. Adjournment: The meeting adjourned at 11:34 a.m.

The next meeting is scheduled for April 5 at 2:00 p.m.





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City and County of San Francisco

## Local Agency Formation Commission



**March 06, 2001**  
**Meeting Information**

### AGENDA

Note: Each item on the Consent or Regular agenda may include the following documents:

- 1) Legislation
- 2) Executive Officer report
- 3) Legislative Analyst report
- 4) Public correspondence

These items will be available for review at City Hall, Room 244, Reception Desk.

### Special Meeting

Tuesday, March 6, 2001 at 9:00 a.m.

City Hall, Room 263

Chairperson: Eisenberg

Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick

Clerk: Gregoire Hobson

### SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Approval or modification of the Executive Officer's Impartial Analysis on the Creation and Maintenance of a San Francisco-Brisbane Municipal Utility District
3. Public Comment on Items not on the Agenda
4. Adjournment

### IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

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San Francisco  
Local Agency  
Formation Commission

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## MINUTES

Special Meeting  
Tuesday, March 6, 2001, 9:00 A.M.  
City Hall, Room 263

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Gregoire Hobson

### SPECIAL AGENDA

(There will be public comment on each item)

#### 1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 9:16 a.m.

Members Present: Chair Eisenberg, Commissioners McGoldrick, Daly, Maxwell, and Ammiano

Members Absent: None

#### 2. Approval or modification of the Executive Officer's Impartial Analysis on the Creation and Maintenance of a San Francisco-Brisbane Municipal Utility District.

Chair Eisenberg asked for the City Attorney's advice on Item 2.

Paula Jesson, Deputy City Attorney, City Attorney's Office, stated that the City Attorney and the LAFCo Commission is in agreement that LAFCo can lawfully amend the current Impartial Analysis by removing the last paragraph of the description of the vote requirement.

Chair Eisenberg asked how the ballot would work in the event the Executive Officer removed the last paragraph of the Impartial Analysis—how would the voters know what the vote would be?

Paula Jesson, Deputy City Attorney, stated there are two possibilities. One is that the Impartial Analysis and the ballot pamphlet would be silent. The voters would not know from the ballot pamphlet because there would be no explanation. Information could come from arguments from the press and other means. The other possibility is that the Director of Elections might feel that he/she has the authority to say something about it. The state statute that we are operating under specifically says what goes in the ballot pamphlet and the order in which it goes in with respect to the formation of a MUD. It is not clear that the Director of Elections would have the authority to say something different, and there may be legal risk in her/him doing so. There is a period of time that the material in the ballot pamphlet is open for public review and challenge. If anyone feels that it was improper for the Director of Elections to do, it could be challenged.

Chair Eisenberg asked if in the general ballot involving initiatives, if the Director of Elections would put a footnote on the bottom of the ballot which will tell you that there are two opposing initiatives, and that the one that has the greater percentage of votes will prevail. Could the Director of Elections instruct the electorate as to how the vote works?

Paula Jesson, Deputy City Attorney, replied that she would have to confirm this information.

Chair Eisenberg stated that his concern is that if LAFCo puts a statement in the Impartial Analysis about how the vote works, and the Director of Elections chooses to advise the electorate, and LAFCo disagrees with him/her, then there would be two separate opinions that would lead to confusion.

Paula Jesson, stated that this Commission is legally entitled to take a position on the Impartial Analysis. She feels that if this Commission would take a position, it is less likely that the Director of Elections would have any reason to say something about it. Otherwise, it would lead to confusion.

Chair Eisenberg asked the Executive Officer how she feels about removing the last statement of the Impartial Analysis?

Gloria L. Young, Executive Officer, indicated that there is no issue in removing the last statement of the Impartial Analysis.

Chair Eisenberg motioned to put a substitute amendment to remove the last statement of the Impartial Analysis. Commissioner Ammiano seconded.

Gloria L. Young, Executive Officer, read the statement to be removed as follows:

"To be effective, this measure must be approved by a majority of the voters in both the City and County of San Francisco **and** the City of Brisbane, pursuant to California Public Utilities Code Sections 11561 and 11652."

#### Public Comment

Jim Sutton, Coalition for Affordable Public Services, the Campaign Committee organized to oppose the MUD initiative, stated that they strongly urge the Commission to reject this amendment and to keep this important sentence in the Impartial Analysis. LAFCo has the duty to let the voters know about the process for passing this initiative. The fact that either San Francisco or Brisbane has veto power over this initiative makes it different than any initiative that the voters have seen. It is exactly this information that the law asks LAFCo to explain in the Impartial Analysis. There is no ambiguity in the law and the City Attorney's Office in its filing with the court and other documents spelled out clearly what the law says--that if voters in one district do not pass the MUD initiative, then the entire initiative fails.

Mr. Sutton stated that the footnote about competing measures relates to City initiatives. It is a City law provision that requires the Department of Elections to explain when there are competing initiatives on the ballot. The Director of Elections would have no discretion to put any information about the vote requirement in the ballot pamphlet because state law says that only LAFCo has the authority to put information into the Impartial Analysis.

Mr. Sutton asked that LAFCo remove the third paragraph of the Impartial Analysis because it is unheard of and prejudicial to include the name of a campaign committee in an Impartial Analysis.

Harold Toppel, City Attorney, City of Brisbane, stated that on the day following the March 1 meeting, he faxed a letter for the Commission, but it arrived too late to be included in the packet. He was told it was being distributed to the Commission, but obviously there was not an opportunity for the Commission to review the letter. Mr. Toppel stated that in the letter he takes the position of the previous speaker that there is no ambiguity in the law. If the language on the statute concerning the two-thirds vote is read, it becomes more apparent that each jurisdiction is separately tabulated, and the vote of each jurisdiction is required for passage of the measure.

The letter also suggests language to be included in the Impartial Analysis that they feel is even more precise than the language proposed by the City Attorney as follows:

"To be effective the measure must be approved by a majority of those who voted upon the proposition in the City and County of San Francisco and also a majority of those who voted on the proposition in the City of Brisbane as required by Section 11652 of the California Public Utilities Code. A rejection of the measure by the voters in either of these Cities will result in failure of the entire proposition."

Mr. Toppel stated that the previous paragraph is the essence of this issue and the obligation of this Commission to inform the voters. He doesn't know what the authority of the Director of Elections may be. It sounds like we are deferring it to another individual whose participation may or may not be provided, or leaving it up to everyone to guess, or leaving it up to a court after the elections. He doesn't know how the voters of San Francisco or Brisbane can figure out what they are voting on when there has not been a clear articulation of the vote that is required for the passage of the measure. If it is the consensus of the Commission that Brisbane's vote doesn't count, then they need to know that. If voters of Brisbane vote to reject the measure, they need to know if there is an attempt to hijack them into a district against their will before the election. Saying nothing on the subject, or simply quoting the statute, or saying the position of both sides gives no useful information. He believes that the function of the Impartial Analysis is to specify the vote of each jurisdiction as required.

Clark Conway, Mayor of Brisbane, stated that an Impartial Analysis means just that, impartial. You will have people promoting it and people against it. The Commission's job is to give a fair and impartial analysis. His City Council is confused on this whole issue. He stated that Chair Eisenberg came out as a proponent of CLUB and that the Chair stated that it doesn't matter how the citizens of Brisbane vote, it is the majority vote. That defies the laws of the United States that this country was founded on. He is suggesting that the clause "to be effective, this measure must be approved by a majority of voters in the City and County of San Francisco and the City of Brisbane" be retained in the Impartial Analysis. The Commission needs to inform people by retaining this clause.

Doug Comstock, Coalition for Lower Utility Bills, stated that the Coalition got 25,000 signatures and turned the petition in, as the law requires. They have a right to be named as the proponent of this initiative. The fact that they are a campaign committee because they did the work, put the petition on the ballot, and are the proponents is beside the point. He agrees with Mr. Sutton that the last paragraph of the Impartial Analysis is a very important sentence--that is the reason it should be excluded. It could easily misinform the voters. The Commission does not know whether they need to have the vote of Brisbane and the vote of San Francisco to pass the measure. Therefore, the voters could be easily misinformed and it is important that that does not happen. It may be ambiguous to leave it out, but it is more important to leave it out. If there is a court challenge later, then it will be the job of a judge to decide that, and not the job of LAFCo. In his opinion, he



recommends taking the last paragraph of the Impartial Analysis out so as not to misinform the voters.

Commissioner Ammiano is in favor of the motion to remove the last paragraph of the Impartial Analysis. He discussed the possibility that was brought up by Commissioner Gonzalez and the Chair last week of being allowed to find another agency other than Brisbane to participate. Supervisor Maxwell was correct in her assessment if we have a parallel agency that is more willing to participate, that it would make it easier. With all of the hard work that the petitioners, proponents for public power, and Chair Eisenberg have done and the various opinions of our City Attorney, the real issue is to make sure in November that MUD passes.

Chair Eisenberg stated in direct response to the Mayor of Brisbane that he got four e-mails from people in Brisbane that they wanted lower utility bills and they wanted to be part of the MUD process. He agrees with Commissioner Ammiano that they would rather have an agency that would want to be part of a MUD, but is not sure the people of Brisbane would not want to be included. He thinks we should continue the discussion.

Chair Eisenberg stated that on the Motion that it would not be appropriate to include anything on the Impartial Analysis that would be subject to question. The City Attorney and himself are both concerned that if the last paragraph of the Impartial Analysis may be wrong, it would result in litigation. That is the reason for taking it out. In his opinion and in his experience with state initiatives, if there were two opposing state initiatives, the one that has the most votes would win. That is a footnote on the bottom of state and city initiatives. He thinks we have been asked to provide an Impartial Analysis and the Executive Officer has done that in a well thought out manner. She is in concurrence with the Commission to take the sentence out, and that is the reason he would proceed with this motion.

Chair Eisenberg moved with the findings of the advice of the City Attorney and the recommendation of the Executive Officer to remove the last paragraph of the Impartial Analysis and would like to incorporate these findings in the amended Resolution. The amended Resolution with the findings will proceed to the vote.

**VOTE:**

**AYES:** Chair Eisenberg, Commissioners Ammiano, Daly, Maxwell and McGoldrick

**NOES:** None

**ACTION:** PASSED

### 3. Public Comment on Items not on the Agenda

Paul Goerke, former City Council and Mayor of Brisbane, resident of San Francisco, stated that he urges that if LAFCo or any representatives from the City go to Brisbane, that it be in public. There has never been a public hearing in Brisbane about this issue with the exception of nine months ago when CLUB went to Brisbane. Questions were asked, but no answers were allowed. Without a public hearing, it goes against the grain of common sense.

Dana Dillworth, Brisbane resident, stated that for the February 12 meeting, she had submitted a letter to the supervisors not knowing the procedure and believes that the letter has to be part of the public record. As the previous speaker had mentioned, Brisbane has not had a public meeting by which any of these issues from San Francisco have been discussed. Her understanding is that it has all been done under closed session. On numerous occasions, Brisbane has not operated according to public will. A neutral position was taken on one referendum and she understands that prior to her moving to Brisbane, there have been two recalls for similar kinds of experiences. She stated that it is important that the Commission understand that Brisbane has the right to protect itself, but does not believe that this is not in the public interest for Brisbane to have a vote. The LAFCo meetings are not publicized well enough in Brisbane. Brisbane is on TCI Pacifica Cable, which does not receive cable showing of these public meetings. Many residents have places in Brisbane where they go to look for meetings that are of public interest, but the agendas have not been posted there. They only have two working days to know about this particular meeting and she apologizes if this is not an overwhelming turnout for Brisbane, but they have not had long enough to know that there is a meeting.

Clark Conway, Mayor of Brisbane stated that Brisbane is neither for nor against the formation of a Municipal Utility District. They are uninformed as to what this means-- is this a good thing or a bad thing? He does not know and has hired a consultant to gather information. They wanted an Impartial Analysis to inform the voters. What he is being told, is it doesn't matter how Brisbane votes, it is the majority of the people from the District. That is undemocratic. How are they going to have a public hearing about something they don't know anything about?

Chair Eisenberg stated that he was on the Golden Gate National Recreation Area (GGNRA) for eight years. On occasion, the GGNRA would have a joint hearing with the San Francisco Planning Commission. He asked if the Mayor of Brisbane thinks it would be a good idea to bring Brisbane's City Council to San Francisco to have a joint meeting?

Clark Conway, Mayor of Brisbane, stated that it would be helpful and would check with the rest of the Council.

Chair Eisenberg stated that he would check with the City Attorney and Executive Officer on this issue and that he has no intention of engaging in undemocratic procedures.

Clark Conway, Mayor of Brisbane stated that the LAFCo Commission should clarify and come to a consensus on exactly what the law states.

Public Comment Closed.

Chair Eisenberg asked the Executive Officer to pursue the possibility of having a joint meeting with LAFCo and the officials of Brisbane.

Gloria L. Young, Executive Officer, concurred.

4. Adjournment: The meeting adjourned at 9:49 a.m.







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City and County of San Francisco

## Local Agency Formation Commission



**April 05, 2001**  
**Meeting Information**

### AGENDA

Note: Each item on the Consent or Regular agenda may include the following documents:

- 1) Legislation
- 2) Executive Officer report
- 3) Legislative Analyst report
- 4) Public correspondence

These items will be available for review at City Hall, Room 244, Reception Desk.

### Special Meeting

Thursday, April 5, 2001 at 10:00 a.m.

City Hall, Room 263

Chairperson: Commissoiner Eisenberg

Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick

Alternate: Commissioner Gonzalez

Clerk: Gregoire Hobson

### SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Adoption of the Resolution of the San Francisco Local Agency Formation Commission establishing open meeting processes and access to public records
3. Resolution appointing the San Francisco City Attorney Legal Counsel for the San Francisco Local Agency Formation Commission

4. Public Hearing: Discussion and adoption of the proposed SF LAFCo 2001-2002 FISCAL YEAR BUDGET (Government Code Section 56381)

5. Discussion and adoption of the Modified Procedures for the Evaluation of Proposals for the Formation of Districts initiated by governmental entities

6. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and Analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane

7. Discussion and approval of the process for selecting and contracting with the consultant for the Sphere of Influence Study

8. Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utilities Commission and other agencies

9. Chairperson Eisenberg's resolution authorizing the Executive Officer to enter into a covenant not to sue with the City and County of San Francisco, the City of Brisbane and the Coalition to Lower Utility Bills, providing that if a majority vote is obtained in favor of a Municipal Utility District (MUD) in San Francisco but not in Brisbane, the MUD shall be formed in San Francisco, and the parties shall not sue to obtain a contrary result

10. Future Agenda Items

11. Public Comment on Items not on the Agenda

12. Adjournment

#### IMPORTANT INFORMATION

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Local Agency  
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**MINUTES**

**Special Meeting  
Thursday, April 5, 2001 at 10:00 a.m.  
City Hall, Room 263**

**Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick  
Alternate: Commissioner Gonzalez**

**Clerk: Gregoire Hobson**

**SPECIAL AGENDA**

(There will be public comment on each item)

**1. Call to Order and Roll Call**

The meeting was called to order by Chair Eisenberg at 10:07 a.m.

Members Present: Chair Eisenberg, Commissioners Gonzalez and McGoldrick

Members Absent: Commissioners Ammiano, Daly, and Maxwell

**2. Adoption of the Resolution of the San Francisco Local Agency Formation Commission establishing open meeting processes and access to public records.**

Chair Eisenberg stated that this Resolution was discussed at their last meeting, formalized by the City Attorney, and presented to the Commission for a vote today. The intent of the Commission was sent to the Sunshine Ordinance Task Force, and they responded with a letter dated March 29, 2001 that is in the Commission packet. The Task Force would like LAFCo to abide by the San Francisco Sunshine Ordinance. Chair Eisenberg will amend his Resolution before the Commission to change the last sentence that now reads as follows:

**"RESOLVED, That SF LAFCo will follow the Brown Act and the spirit of the Sunshine Ordinance."**

to:

**"RESOLVED, That SF LAFCo will follow the Brown Act and will abide by the San Francisco Sunshine Ordinance."**

Public Comment:

Dana Dillworth, Brisbane resident, stated that Brisbane does not have access to the San Francisco Viacom system and does not receive all information. She would like there to be a provision that when LAFCo is dealing with provisions dealing with the Brisbane Municipal Utility option, that postings be included at the Brisbane City Library and on the City billboard.

Commissioner McGoldrick asked the speaker if Brisbane has public notification requirements in their government.

Dana Dillworth, Brisbane resident, responded that she believes that the requirement is 72 hours. They are usually notified by Thursday for a Monday meeting.

Commission McGoldrick asked where the City billboard is located.

Dana Dillworth, Brisbane resident, responded that the billboard is located outside of the Public Library, at 250 Visitation Avenue, Brisbane. It is different than the City Library's location in that one is outside and the other is upstairs.

Bruce Brugman, Bay Guardian stated that the San Francisco for Sunshine Group and the Task Force, with this Resolution, are trying to make the point that even though LAFCo is a state agency, this is very much part of the City. His position is that LAFCo vote to be under the Sunshine Ordinance and live by it. He agreed with Commissioner Eisenberg that the wording of the amendment to the Sunshine Ordinance be amended as stated.

Commissioner McGoldrick asked the speaker if other agencies that are not City and County government agencies are abiding by the Sunshine Ordinance? He asked who the other agencies are.

Bruce Brugman, Bay Guardian stated that other agencies such as the School Board, Community College Board, and Redevelopment Agency should abide by the Sunshine Ordinance, and they haven't done so as far as he knows.



Commissioner Gonzalez asked if the Transportation Authority is subject to the Sunshine Ordinance?

Gloria L. Young, Executive Officer, stated that according to the Sunshine Ordinance, Section 67.32, Provision of Services to Other Agencies, talks about having a number of associations comply with the Ordinance, and it lists the San Francisco Transportation Authority as one of those agencies. Donna Hall, the Sunshine Ordinance Administrator is here and can advise the Commission.

Donna Hall, Sunshine Ordinance Administrator stated that she would research the question and report back to the Commission within a few days.

Commissioner Gonzalez asked the Executive Officer what the primary distinction is between the Brown Act and the Sunshine Ordinance?

Gloria L. Young, Executive Officer, stated that there are a number of distinctions. Specific distinctions she had mentioned to the Commission dealt with the 24-hour requirement for special meetings in the Brown Act as opposed to 72 hours in the Sunshine Ordinance. There were recommendations with respect to the Request for Proposal (RFP) process and the Brown Act. She stated that the City Attorney could better advise the Commission as to the distinctions between the Sunshine Ordinance and the Brown Act.

No further Public Comment.

Chair Eisenberg moved to adopt the Resolution of the San Francisco Local Agency Formation Commission establishing open meeting processes and access to public records, as amended; Commissioner McGoldrick seconded; No opposition.

ACTION: PASSES—Adopted as amended.

Gloria L. Young, Executive Officer, stated that, with the concurrence of the Commission, LAFCo could adopt the Resolution without a roll call vote if the Commissioners all agree.

3. Resolution appointing the San Francisco City Attorney as Legal Counsel for the San Francisco Local Agency Formation Commission.

Public Comment

Bruce Brugman, Bay Guardian, stated that appointing legal counsel is a critical issue for the Bay Guardian and those who have been working on the Hetch Hetchy issue all these years. He recommends that the Commission get answers from the City Attorney's office on the certain issues before recommending that they be appointed as legal counsel. The City Attorney historically has made decisions in favor of PG&E, against the enforcement of the federal Raker Act, and against bringing our

own Hetch Hetchy power to San Francisco citizens and businesses. From his perspective, the City Attorney is placing one roadblock after another in the path of the citizens working to put the initiative on the ballot. Their advice has often been deficient or conflictive to LAFCo in regards to a MUD.

He stated that the City Attorney, Louise Renne, appears to have a conflict of interest with her husband's law firm, which has substantial ongoing business with PG&E. The Commission should find out if the husband, Paul Renne, is a partner in Cooley, Godward, the firm that has collected more than \$3,000,000 from PG&E between 1995 and 1999 according to PG&E's filings with the CPUC. The following questions were asked. How much did Paul Renne's law firm collect last year and in the last three months? Does PG&E have an ongoing agreement with Paul Renne's law firm? What work did Paul Renne's law firm do for PG&E? How much money did Paul Renne collect from PG&E in the last ten years? In the midst of the energy crisis, Cooley Godward has on their web site that their clients include PG&E. On the same page, they say they defended a large utility against criminal charges that it willfully and negligently failed to trim trees near their distribution line. Has the City Attorney, Louise Renne, disclosed her connections to a law firm that is doing substantial and continuing amount of business with PG&E? Does the City Attorney consider these financial connections to constitute a conflict of interest in representation of an agency and an issue that has a bearing on PG&E's future? Has the City Attorney gotten or will get a written opinion on this conflict of interest point and if so, could she make it public to LAFCo and the public? If so, why or why not? What steps are in place to assure LAFCo and the public that the City Attorney will fully represent the interest of LAFCo, even if the City Attorney disagrees with LAFCo? He urges that the Commission ask for these answers from the City Attorney in writing and get an outside independent attorney to review this issue, one that is experienced in ethical issues, and submit it to the Ethics Committee of the San Francisco Bar Association for ruling.

Chair Eisenberg asked if the speaker is asking for the Commission to defer this Resolution until they obtain answers to these questions?

Bruce Brugman, Bay Guardian, concurred.

Commissioner McGoldrick asked if there is a policy that excludes Deputy City Attorneys from certain cases if it is determined that there is a conflict regarding financial interests.

Paula Jesson, Deputy City Attorney, stated that they are subject to Rules of Professional Responsibility. None of them as attorneys can engage in anything that would constitute a conflict of interest. If there is a conflict, no one who had the conflict would be participating in the case, litigation, advice or matter.

Commissioner McGoldrick asked if that is under the Conflict of Interest Rules or under the California Bar Association's rules.



Paula Jesson, Deputy City Attorney stated that it is under Rules of Professional Responsibility and if there is a conflict under the Political Reform Act, they could not participate either.

Commissioner McGoldrick asked if there were a case involving a particular factory and that person owned stock in the factory, if that person would be precluded from dealing with that case, but some other attorney could deal with the case?

Paula Jesson, Deputy City Attorney, stated that they would look at it on a case by case basis and would not involve the person who has the conflict.

Commissioner McGoldrick asked if it were determined that the City Attorney did have a conflict of interest, could other Deputy City Attorneys deal with those cases without bringing the City Attorney into the case?

Paula Jesson, Deputy City Attorney, stated that she has not been involved in those decisions and will have to research and report back to the Commission.

Commissioner McGoldrick asked what the Commission could do to clarify this issue. Would the Commission ask the City Attorney or some other agency such as the Ethics Commission or state agency to clarify this issue?

Paula Jesson, Deputy City Attorney, stated that the Commission could convey any request they have for information to the City Attorney. She will research what other agencies the Commission can go to.

Chair Eisenberg stated that according to the budget that is on the agenda for approval today, \$100,000 would be allocated for legal services. He asked if that is what this agency is going to pay to the City Attorney's office and how the City Attorney's Office is being paid today since LAFCo has not yet passed the budget?

Paula Jesson, Deputy City Attorney, concurred that if the Commission chooses the City Attorney's office to represent them as legal counsel, they would be paid through the \$100,000 that is allocated for legal fees. She does not know how they are being paid today since the budget has not yet been passed.

Gloria L. Young, Executive Officer, stated that once the funds become unreserved from the Board of Supervisors, the City Attorney's Office will be reimbursed for their time today.

Chair Eisenberg stated that the City Attorney is a civil servant who has a salary and a budget. The City Attorney's Office bills its time on an hourly basis to other agencies and recoups legal fees out of other agencies' budgets.

Gloria L. Young, Executive Officer stated that was her understanding. The process that is being used for the budget is the same that other LAFCo's in the state use that are dependent upon county resources.

Chair Eisenberg asked what the City Attorney's hourly rate is.

Paula Jesson, Deputy City Attorney, replied that there are different rates for different attorneys in the office. She believes that their work order rates are calculated upon how much the attorney gets paid and there is overhead built in. The rates are not comparable to private rates. When they do work for certain departments, they have provisions that they bill them at certain rates. It is her understanding that the LAFCo rates would be the same as when they present a bill to other departments of the City.

Chair Eisenberg stated that the budget provides for \$100,000 in legal services, \$100,000 for consulting services, and \$100,000 for CEQA review. He has met Mr. Mihaly, who is with a private law firm and asked who is paying him.

Paula Jesson, Deputy City Attorney, replied that she is not involved in the payment issues, but she could research the subject.

Chair Eisenberg asked if Mr. Mihaly is an outside attorney who is hired for the purpose of advising LAFCo.

Paula Jesson, Deputy City Attorney, stated that she was not involved in the initial hiring process. She has talked to Mr. Mihaly about LAFCo related issues.

Chair Eisenberg stated that he understands that Mr. Mihaly is the LAFCo expert and the advisor to LAFCo. He asked if the Commission could hire Mr. Mihaly as LAFCo's counsel instead of hiring the City Attorney. If they were to hire Mr. Mihaly, would the Commission have to put out a bid for legal services to see if Mr. Mihaly or someone similar would be willing to be legal counsel to LAFCo? Mr. Mihaly is acting as LAFCo's consultant through the City Attorney's Office. Could the Commission just hire Mr. Mihaly as LAFCo's counsel?

Commissioner McGoldrick stated that his understanding is that this issue is a policy call of the LAFCo Commission.

Gloria L. Young, Executive Officer, stated that she would request legal advice, but she believes that the Commission would have to go through the legal RFP process because it has agreed to abide by the Sunshine Ordinance.

Public Comment:

Marc Salomon stated that the confidence by San Franciscans in the City Attorney as a political office is melting. He thinks the Commission should look beyond the City Attorney's office for counsel on this issue because the City Attorney's advice has fallen short of the standard of objectivity that is needed to represent the people in this process. He recommended that LAFCo hire their own attorneys to draft a progressive alternative to the "one size fits all" MUD initiative that has many shortcomings. He would like to see a progressive charter amendment to counter some of the issues that they have seen on this subject. He does not believe that they can get that as long as the City Attorney is counsel for this project. The Commission should look at ways to break beyond the at large elections that can easily be bought off by PG&E and impair this entire process by the time it gets to the voters in November. He stated that public power is a great thing, and that the issue should not go through the group think mentality that fails to evaluate as decision points come up. He stated that we have to do this in a way that we are not going to give this to PG&E in November.

Chair Eisenberg asked the speaker if he was in favor of a charter amendment.

Marc Salomon replied that he is in favor of looking at ways other than the 1940's "one size fits all" MUD act.

Don Eichelberger, Green Party of San Francisco, asked what other decisions or options have been examined to hire an attorney for LAFCo. He agrees that the Commission needs independent counsel because the City Attorney's Office has exhibited bias on this issue in the past. He asked how the public would participate in the decision in terms of the RFP process and being able to identify candidates. Is the continued absence of the City Attorney for LAFCo going to impose a hardship on the work of this Commission? What kind of timeline is there to find someone who is adequate to do the task?

Ernestine Weiss stated she feels that PG&E has been delinquent in paying their proper tax rate for many years in this City. She is sure it is due to the City Attorneys bringing that about. They pay huge amounts to City people who run for office and that is a conflict of interest. She urges the Commission to hire an outside attorney to handle this matter.

Bruce Brugman, Bay Guardian stated that it would be helpful to receive an answer if the Deputy representing the City Attorney knows of any opinion of the conflict issue. When the Bay Guardian investigates, the City Attorney says they do not have anything, that everything is fine. They call the law firm and ask what the law firm or Paul Renne is doing for PG&E—they say that is private business. The law firm's web site explains what they are doing. They have the capability of analyzing a particular individual or corporate problem understanding and predicting with some certainty the likely course that an investigation will take in developing a strategy to meet that investigation in an effort to satisfy the client's needs and obtain the most favorable result possible. As needed, they will add people from other disciplines

within the firm to assist in identifying and supporting the appropriate strategic plan. You could apply what they are saying on that web site to exactly what the City Attorney has done for the entire period that Louise Renne has been City Attorney. He would ask the question if the Deputy City Attorney has an opinion on this issue.

Chair Eisenberg stated that in the short time he has worked with the Deputy City Attorney, he is convinced that she is not the person to ask these questions to. She needs to forward these questions to the people in the City Attorney's Office who have the expertise and answers.

Paula Jesson, Deputy City Attorney, stated that it is the position of their office that there is no conflict with the City Attorney. As far as further details that Mr. Brugman is asking for, she cannot say that the City Attorney's office has a position.

Public Comment Closed.

Commissioner Gonzalez stated that there would be legitimate concern if somebody were gaining financially from a relationship with a company such as PG&E. He would suggest that Ms. Renne communicate about a conflict of interest to LAFCo.

Paula Jesson, Deputy City Attorney stated that she does not know if there has been communication with LAFCo directly on the conflict of interest issue. She indicated she would pass on the request.

Commissioner Gonzalez asked if the City Attorney has ever declared a conflict?

Paula Jesson, Deputy City Attorney stated that she does not know.

Commissioner Gonzalez asked if there are State Bar rules that control when a City Attorney must declare a conflict—Rules of Professional Responsibility?

Paula Jesson, Deputy City Attorney, stated that they are within the same Rules of Professional Responsibility that all attorneys are. As public officials, they are subject to the Political Reform Act too.

Commissioner Gonzalez asked if she sees any problem in asking the City Attorney to respond in writing or in another way and having the State Bar investigate the matter through an Ethics Committee if they have one.

Paula Jesson, Deputy City Attorney, stated that she would pass on the request and that it was up to the City Attorney to respond.

Commissioner Gonzalez stated he would be opposed to making a decision at this time to hire someone else as legal counsel.



Commissioner McGoldrick stated hypothetically that if the Commission has a situation that he is a public official and his wife was part of a law firm that did business with some entity that he had to consider in a decision and his wife precluded herself from any cases involving that entity. Would that create a distance that would be considered sufficient to obliterate the conflict of interest consideration?

Paula Jesson, Deputy City Attorney, stated that there are clear rules under the Political Reform Act as to sources of income to you and to your spouse and people who are dependent on you. She will research the procedures.

Commissioner Gonzalez stated that there would have to be more specifics reported as to what amount of money is involved. They too as elected officials have been required to file declarations of financial interests.

Commissioner McGoldrick asked for clarification on the second document of his packet regarding a letter that is dated March 19, 2001, from Gloria Young to the LAFCo Commissioners. The second sentence, first paragraph, indicates that the Commission may request the services of the City Attorney's Office or may direct the Executive Officer to contract with outside counsel. What they have in front of them is a Resolution dated March 30. If the Commission would adopt the Resolution in front of them today, would that preclude them from hiring outside counsel?

Chair Eisenberg stated that at this time the Commission has had the City Attorney and outside counsel, but outside counsel has been acting as a consultant to the City Attorney. He does not think the Commission would be precluded from bringing in outside counsel. Many cities contract outside counsel because their City Attorney can't do it or their City Attorney is an outside contract. If this Resolution is passed, LAFCo would not be precluded from hiring outside counsel.

Paula Jesson, Deputy City Attorney, stated that there is a specific provision that says that LAFCo shall appoint counsel and if there is a conflict on any matter shall appoint other counsel to deal with the conflict issues.

Commissioner Gonzalez stated that Mr. Brugman stated that there has been a relationship between LAFCo and the City Attorney about the measure that is now on the ballot and considered by the voters in November. It seems that one of the primary duties of LAFCo is to consider the shadow MUD petition that was sponsored by Commissioner Gonzalez, and the City Attorney has given good advice to him on how they could proceed. Commissioner Gonzalez asked for Mr. Brugman's opinion of the shadow MUD in regards to the conflict issues that he has raised?

Mr. Brugman, Bay Guardian, replied that he does not know anything specifically about the shadow MUD. He knows that in his observations with LAFCo, the way the City Attorney has provided advice is conflicting and questionable. The City Attorney is saying that if they disagree with the LAFCo position, they won't defend LAFCo.

Ultimately, there may be litigation and if you have a conflicting City Attorney, you'll have a problem representing LAFCo.

Commissioner Gonzalez stated that he was at the full Board meeting, and he recalls the City Attorney saying that they would defend the actions of the Board in putting the matter before the voters.

Mr. Brugman, Bay Guardian, asked if it was Buck Delventhal that was at the meeting and whether he was representing the City Attorney or LAFCo. It is his understanding that he was representing the City Attorney, and there was no attorney representing LAFCo.

Chair Eisenberg concurred. He stated that the City Attorney has been temporarily retained and has been acting as a de facto attorney since the inception.

Commissioner Gonzalez asked what there is about a representation made by Mr. Delventhal that he would fully defend the actions of the Board in putting the matter on the ballot, but he was there as a non-attorney for the LAFCo? The City Attorney that is present at the Board meetings is Ted Lakey. He was at that meeting as well representing the Board.

Chair Eisenberg stated that LAFCo was represented by counsel before the full Board meeting. At that time, LAFCo passed a rule, which they called the "Alioto Rule." It was the City Attorney's public opinion that the rule was not in compliance with the Cortese-Knox-Hertzberg law. When LAFCo came to the Board of Supervisors, LAFCo did not have representation. In Mr. Delventhal's capacity as the Deputy City Attorney, he was representing both the Board of Supervisors and LAFCo. LAFCo had a City Attorney and his name was Dorji Roberts, but he was not present at the meeting. Chair Eisenberg wrote him a letter requesting his attendance.

Commissioner Gonzalez asked how the change of counsel could adversely impact the work that the Commission is doing to try to strengthen the MUD petition before the voters. He can work with whatever counsel that LAFCo hires. However, the City Attorney has given him good advice in proceeding with the alternative measure to improve the measure, notwithstanding their public reservations about some of the decisions that have been made. The change in the law and what is happening in Sacramento raises questions as to whether the City Attorney is right or wrong.

Bruce Brugman, Bay Guardian, stated that PG&E has been successful for eighty years in keeping themselves in control of almost every issue in City Hall and keeping the rate paying citizens whom are paying higher and higher rates out of the loop. The speaker stated that he has no problem with Paula Jesson, Deputy City Attorney and Jackie Minor and has a great deal of respect for them. He feels the problem is from the top down, and he would like disclosure and an independent attorney. The City Attorney went out and hired their own LAFCo consultant for advice that is not

filtered down to this Commission and then comes out in a charter amendment that keeps PG&E in power.

Commissioner Gonzalez stated that it is not uncommon for an attorney and a client not to agree on a matter. The attorney gives advice to a client and then the client decides the course of action to take, and the attorney gets behind that course of action. He asked the City Attorney what happens when an attorney has a dual role of giving advice to members of the Board of Supervisors. and the LAFCo's attorney is no longer behind the LAFCo, but giving advice to individual members of the Board of Supervisors?

Paula Jesson, Deputy City Attorney stated that the City Attorney gives the same advice to LAFCo as to the Board. There are policy decisions that the City Attorney does give advice about. Anybody who has a concern about a conflict should have it addressed.

Commissioner Gonzalez asked if the LAFCo went to the Board meeting with an independent counsel for advice instead of the City Attorney, and a Board of Supervisors member asked the counsel to answer a question, would that attorney be able to answer a question inconsistent with the LAFCo.

Chair Eisenberg stated that as a private attorney, a client may come to his office with an issue that may be unwise, but the client is entitled to advice. Can he, as the client's attorney, go to court and stand up in front of the judge and say that he has advised another client that what his client is doing is wrong. His statement to the court would infer that his client is acting improperly.

Paula Jesson, Deputy City Attorney, stated that it would be fair to everyone to get those who are involved in the process to address those issues.

Commissioner Gonzalez stated that there is a distinction between what Chair Eisenberg is stating as private counsel giving advice in a closed session as opposed to the public nature of the information that gets disclosed through the LAFCo counsel and could be subject to a cross examination. He asked if you could call counsel to be a witness in a case when the counsel is defending the other side?

Chair Eisenberg stated that this Commission passed a rule called the "Alioto Rule." The Deputy City Attorney, Buck Delventhal, who he thought was his counsel, advised the Board of Supervisors that LAFCo had acted improperly when it passed the "Alioto Rule." He did not like that. His inquiry has to do with the State Bar rule, that says "if an attorney has decided that it cannot properly advise its client and represent its client in a private or public forum, then it must disclose to that client in writing that it has a conflict and give the client an opportunity to obtain independent counsel." He asked the City Attorney to defer these questions to the appropriate people and explain to the Commission how they can obtain proper representation in

public forums when the advice to the Board of Supervisors may be different than the advice to LAFCo.

He stated that the City Attorney is taking the position that the Alioto Rule is not in compliance with the Las Tunas decision and has stated so publicly. It is his opinion that they are required in future proceedings to defend LAFCo's position, and not to undermine it. If the City Attorney has an intention to undermine their position in the future, then they should be removed.

ACTION: Chair Eisenberg stated that Paula Jesson would convey these concerns to her office and report back to the Commission at the next meeting. Item 3 was continued to the next meeting.

4. Public Hearing: Discussion and adoption of the proposed SF LAFCo 2001-2001 Fiscal Year Budget (Government Code Section 56381).

Gloria L. Young, Executive Officer, stated that she would like to respond to Commissioner Gonzalez's question as to whether the San Francisco Transportation Authority complies with the San Francisco Sunshine Ordinance Task Force. At this point, they have not formally adopted the Sunshine Ordinance.

The budget before the Commission includes identical items as the budget that was approved by the Commission last fall with the exception of a reduction of \$300,000 which has been made to the consulting and CEQA costs. The hope is if the budget is approved, a request to the Board of Supervisors will be made to release funds that are currently on reserve for Fiscal Year 2000-2001 to pay for the consulting services rather than use funds in the Fiscal Year 2001-2002 budget. The Fiscal Year 2001-2002 budget is in the amount of \$454,250.00. The previous budget was for \$754,250.00. According to the new Cortese-Knox-Hertzberg bill, this will be the base budget of LAFCo if the Board adopts it. This is the first step—the final budget would come before the Board in another public hearing in May.

Chair Eisenberg stated with respect to the statement that Commissioner's fees would be paid at \$50 per meeting, that it took him about four hours to prepare for this meeting--a meeting that would take two hours. The supervisors also have to spend a large amount of time preparing for the meeting. He thinks that \$50 is an inadequate amount and would like to revise the stipend to \$150 per meeting and asked to take it out of another source if necessary.

Gloria L. Young, Executive Officer stated that if that is the wish of the Commission, she would take it from another source that is within the budget or add it to the budget. The average that the Commission has met is once a month.

Commissioner McGoldrick asked about the description that says for ten meetings per year. What if there are twenty meetings?



Gloria L. Young, Executive Officer, stated that the ten-meeting figure was based on an average from October of last year to the end of the fiscal year. There are funds in the other accounts that can be moved accordingly if other services are not used.

Commissioner McGoldrick asked whether they originally discussed the amount of \$500,000 as their original budget?

Gloria L. Young, Executive Officer, stated that the budget of \$454,250 is approximately the amount originally discussed. She will bring back an amended budget at the next meeting.

Commissioner Gonzalez asked what amount the other Board members who sit on other Commissions are paid?

Gloria L. Young, Executive Officer, stated that members of the Board generally are paid anywhere from \$50.00 to \$100.00, and that is specific Boards, Commissions, or agencies outside of the City umbrella.

Commissioner Gonzalez asked whether a member of the Board of Supervisors is limited to a number of committees?

Gloria L. Young, Executive Officer stated that a Board member is limited to two committees that for which he or she receives a stipend. If a Board member is sitting on two agencies that they are receiving two stipends for, they would be precluded from receiving a stipend from this Commission.

Chair Eisenberg stated that LAFCo is a State Commission, not a City Commission and there may be a distinction. He asked whether the Rule refers to state agencies? His interpretation is that the Rule refers to City agencies.

Gloria L. Young, Executive Officer, stated that it is a policy that the Board of Supervisors has made in their Rules of Order, and they can choose to revise the Rules to preclude state agencies. The Rule refers to agencies in general.

Commissioner Gonzalez stated that he thinks the policy refers to non-Board committees, so it would refer to LAFCo. He feels there would be no reason to increase the \$100.00 amount that other Commissions are paid. The other supervisors are on other Commissions, so it would be unlikely that LAFCo would be paying them a stipend at all. He thinks the public should be able to comment and the regular Commission should be able to vote on the issue since he is at the meeting as an alternate.

Chair Eisenberg stated that he would settle for \$100.00.

Gloria L. Young, Executive Officer, stated that the Commission would have to vote on the preliminary budget. The Commission will have another opportunity to adopt

the budget. The Cortese-Knox-Hertzberg bill calls for a final adoption, so there will be another public hearing notice that will occur before the main meeting.

#### Public Comment

David Dauty stated that the stipend should be \$250.00. The problem is if you underpay the supervisors, a lot of people cannot run for supervisor because they would have to be independently wealthy.

Commissioner Gonzalez stated that he would rather have the issue of supervisor's salaries go to the voters to get reform instead of making it up with Commission appearances.

ACTION: The preliminary SF LAFCo 2001-2002 budget PASSES without objection, as amended to increase the stipend to \$100 per meeting. The final Resolution will come back to the SF LAFCo at the next meeting.

#### 5. Discussion and adoption of the Modified Procedures for the Evaluation of Proposals for the Formation of Districts Initiated by Governmental Entities.

Gloria L. Young, Executive Officer, stated that the procedures are before the Commission for approval. She would draw the Commission's attention to Section 3, Procedure for the Evaluation of Proposals for the Formation of Districts that do not Specify the Services that may be Provided.

Chair Eisenberg stated that they have the "shadow MUD" before the Commission. The provision on page 7 was carefully worked out by Mr. Mihaly and was written in discussions that the Chair participated in. The way that the "shadow MUD" would be treated is that a series of complicated requirements stating that you have to explain what the scope of the utility district would be, would be waived. As outlined in the procedures, it calls for a two-stage process that will allow the Commission to approve the formation of a district that does not specify the services that it will provide, subject to the requirement that the district, once formed, obtain further review and approval by LAFCo for the provision of specified services.

Gloria L. Young, Executive Officer, concurred that the above is an accurate statement.

#### Public Comment:

Harold Toppel, City Attorney, City of Brisbane, stated that if the proposal initiated by the Board of Supervisors excludes the City of Brisbane, then they have no interest in this item. San Francisco can adopt whatever procedures they wish. If Brisbane is included, he made a review of the Cortese-Knox-Hertzberg law and did not find provisions in the law that authorizes this kind of procedure where you would first be voting on what is essentially a shell and then there would be a determination of the services. As he reads the Act, the description of services is part of an application

and factors to be considered in approving the application are delineated in the Act. The purpose of the Act is to conduct the public review process and then put the matter to a vote. Brisbane's concern is that they need to know the details and they think it should be provided before the vote. Later on when the services are delineated, it is not subject to a vote--it will only be determined by LAFCo. The whole issue of what MUD would do would never get to the voters. They think this process is repeating the same objections they had to the earlier petition initiated MUD. The issue is whether a government agency that does not have its purpose and function should be created.

Commissioner Gonzalez corrected the speaker's comment that the determination of services would not be determined by LAFCo solely, because it would be determined by the elected MUD representatives. The potential area that this body could go into could be extensive. To try and define everything exactly that this MUD might engage in would be premature. MUD directors would be engaged in much of the work that would be done and guide it in such a fashion to ensure that it is done appropriately.

Public Comment Closed.

Chair Eisenberg stated that he has no objection with Mr. Mihaly's suggestion as to how to handle the "shadow MUD." He thinks it is an excellent suggestion and that Brisbane's concerns would be met in Item 9. He applauds the Executive Officer's work on this item.

ACTION: Chair Eisenberg motioned to adopt the modified procedures for the evaluation of proposals for the formation of districts initiated by governmental entities; Commissioner McGoldrick seconded.

Vote:

AYES: Commissioners Gonzalez and McGoldrick; Chair Eisenberg

ACTION: PASSED

6. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and Analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane.

Chair Eisenberg stated that this matter calls for a detailed discussion and that Commissioner Gonzalez has raised questions of an alternate member participating in substantive discussions. Based on time constraints, a recommendation was made to continue this matter to the next meeting. Chair Eisenberg asked for Commissioner Gonzalez's opinion.

Commissioner Gonzalez stated that he thinks the regular Commissioners should have an opportunity to vote on this matter.

No Public Comment.

ACTION: Continued to the next meeting.

7. Discussion and approval of the process for selecting and contracting with the consultant for the Sphere of Influence Study.

Chair Eisenberg stated that this item is similarly a significant item and recommended forming a Subcommittee on this issue. He inquired as to whether they need two or three members to form a Subcommittee?

Gloria L. Young, Executive Officer stated that three members would constitute a quorum, so less than three would be ideal for a meeting if you want to select an informal process. She stated that the City Attorney might be able to provide further clarification.

Chair Eisenberg asked if the meeting would have to be at City Hall?

Gloria L. Young, Executive Officer, stated that the meeting would have to be in a place accessible to the public. Minutes and notes would have to be taken.

Chair Eisenberg asked if Commissioner McGoldrick would join him in forming a Subcommittee?

Commissioner McGoldrick asked Chair Eisenberg to explain why he feels they should have a Subcommittee rather than the whole Commission's consideration of the item?

Chair Eisenberg stated that he does not know how the Commission would approve a consultant without going through the interview process. He stated that the Commission meetings can go on forever, and that you can not have the Commission interviewing people. He thinks the Subcommittee can report to the Commission after selection.

Gloria L. Young, Executive Officer, stated that Chair Eisenberg asked for this item to be continued. The subcommittee is one of the potential recommendations of this item. She asked whether the subject of the subcommittee as part of the whole package be moved to the next meeting or pull out that portion of the Subcommittee recommendation?

Chair Eisenberg stated that he wanted to pull out the Subcommittee portion of the recommendation because he does not want to delay the process. There is enormous public demand that they select a consultant and do the study.



Commissioner McGoldrick asked if there could be a third alternate member.

No Public Comment

ACTION: Without objection, Chair Eisenberg constituted a Subcommittee consisting of Chair Eisenberg, Commissioner McGoldrick, and an alternate third member to deal with the issues under Item No. 7. Item No. 7 was continued to the next meeting.

8. Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utilities Commission and other agencies.

Public Comment:

Dana Dillworth, Brisbane resident, stated that as a member of the public, she has asked the City of Brisbane to disclose what activities it is doing regarding a formation of a MUD. Apparently, it is all coming from closed session. While she has not received a letter that is saying that they would not give her information, she has not received any information. She asked who had directed the City Attorney to write these opinions that are contrary to the public's right to vote? She would like to have Brisbane's activities put on the public record so the public knows what is going on.

Public Comment Closed.

Chair Eisenberg stated that the reason for this request is from public parties asking if LAFCo has the right to obtain from the San Francisco Public Utilities Commission (PUC) information regarding profits that PG&E has submitted to PUC. He would like the City Attorney's opinion. The statute says that LAFCo can obtain records from public agencies. Between now and November, there will be a question as to whether public power can provide power that is cheaper. The only way the Commission can determine the answer to that question is by determining what the profit is. PG&E routinely submits records to the PUC, but the PUC engages in a procedure in which it redacts proprietary information. The utility provides information to the PUC, but the PUC does not provide information to the public. Is LAFCo's ability to request records equivalent to subpoena power? If it is, then he would think that they have the right to ask the PUC not only for the records that are provided to the public, but for the records that is proprietary information that is submitted by the utility to the PUC. Would LAFCo then have the discretion to release that information and make the decision that it is not proprietary?

Commissioner McGoldrick asked if this is a question regarding the California PUC?

Chair Eisenberg stated that he doesn't think the statute has given LAFCo the power to obtain records from state agencies, only from local agencies. If LAFCo asks the City PUC for records and they refuse to give it to them, could they go to court and obtain a court order saying they have to give the records to LAFCo?

Public Comment Reopened.

Bruce Brugman, Bay Guardian, stated that he has been working on this issue since 1969 and it is the first time that he realized that PG&E submitted these records to PUC. The reason this is significant as a public policy issue is because the City is by federal law supposed to have public power. PG&E has controlled that power all these years and forced residences and businesses to buy their expensive private power. The Guardian has never been able to obtain these key financial figures from PG&E. How much are they making using Hetch Hetchy power? They would not be fighting so hard unless they were making an enormous profit from the City of San Francisco. How can people and businesses afford to pay the increasing rate hikes? He stated that LAFCo should ask PG&E directly for the records, then go to PUC for the records, and then say publicly that they are after the records. The key question is how much profit is PG&E taking out of the City and County of San Francisco even though we have built a dam and even though the Raker Act and Supreme Court have said that we are supposed to use our own public power?

Commissioner Gonzalez asked the City Attorney if this Commission has subpoena power?

Paula Jesson, Deputy City Attorney, stated that she would research the question.

Chair Eisenberg stated that the statute does not state that LAFCo has subpoena power.

Commissioner Gonzalez asked the City Attorney if any Committee of the Board of Supervisors has subpoena power?

Paula Jesson, Deputy City Attorney, stated that she believes the Charter gives an agency of the Board subpoena power.

Commissioner Gonzalez asked if the Board of Supervisors has the right to confer subpoena power on an agency such as LAFCo?

Paula Jesson, Deputy City Attorney, stated that she does not believe so. She knows there is subpoena power, but she assumes it has to do with the operations of its own departments. She stated she would research the Charter provisions.

Bruce Brugman, Bay Guardian, stated that whether or not you have subpoena power, you can publicly raise the issue of how much profit PG&E is taking out of the City and County of San Francisco's profit.

Commissioner Gonzalez asked if the Commission could obtain that information from their corporate disclosures?

Chair Eisenberg stated that frequently companies who submit information to City agencies will take the position that they have trade secrets that they do not want to disclose. Ultimately, they do not disclose what their profits are.

Commissioner Gonzalez asked if the Wheeling fee is what is being discussed.

Bruce Brugman, Bay Guardian stated there are a series of issues. How much profit is PG&E taking out of the City and County of San Francisco for its overcharges to residences and businesses that is forced to buy their expensive private power instead of the City's cheap Hetch Hetchy public power? What is the precise Wheeling fee? What happens to the Hetch Hetchy power when it goes to the PG&E grid in Newark? How much of that power is wasted? There has never been an energy audit.

Supervisor Gonzalez stated that he thinks these documents have been made public pursuant to the bailout effort in Sacramento.

Bruce Brugman, Bay Guardian stated he was not aware that the records were made public and that no one knows what PG&E's profit is.

Supervisor Gonzalez asked for clarification of the question that the Commission is asking.

Chair Eisenberg stated that the Commission is specifically asking for the profit PG&E is making on its sale of electricity to San Francisco residents. PG&E equalizes its profit throughout the state, and presents an equalized profit to the Public Utilities Commission. There is a public belief that the exact amount of profit that PG&E is making in San Francisco is not known and specific at this time.

John Eighberger asked if the Commission has the power to talk to the State Board of Equalization for their input.

Public Comment Closed.

9. Chairperson Eisenberg's resolution authorizing the Executive Officer to enter into a covenant not to sue with the City and County of San Francisco, the City of Brisbane and the Coalition to Lower Utility Bills, providing that if a majority vote is obtained in favor of a Municipal Utility District (MUD) in San Francisco but not in Brisbane, the MUD shall be formed in San Francisco, and the parties shall not sue to obtain a contrary result.



Chair Eisenberg, at a prior meeting, asked the Brisbane City of Attorney if Brisbane could find some mechanism for freeing the necessity of Brisbane being in or out of the MUD district. Subsequent to that meeting, they asked Senator Speier to obtain an opinion from the legislative counsel who has provided the Commission with an opinion that if MUD loses in Brisbane and wins in San Francisco, that the MUD District would be created in San Francisco. The City Attorney has assisted in drafting the Resolution. The question is whether this Commission adopts the position of the legislative counsel.

#### Public Comment:

Joseph Alioto, Law Offices of Mayor Joseph L. Alioto and Angela Alioto. He is here to read into the record and distribute a letter on Angela Alioto's behalf to the Chair and Commission members endorsing the stipulation between the Mayor of Brisbane, City and County of San Francisco, CLUB, and LAFCo.

Harold Toppel, City Attorney for Brisbane, stated that there are members of the Board, this Commission, and CLUB who have expressed their assurance that there is no intention to bring Brisbane into a district if its own voters vote against it. Those comments are appreciated. He thinks people should be aware of the limitations of a document not to sue. If they enter into this arrangement, it does not protect them from third parties opposed to or in favor of a MUD. They are willing to work cooperatively with the Commission, San Francisco, and CLUB to form an understanding.

Dana Dillworth, Brisbane resident, stated that if Brisbane does not vote for the MUD, she is in support of Brisbane not being forced into it. She is concerned that as a member of the public she wants to know the details that have not been forthcoming. She would like to add to the discussion that Brisbane not continue in any more politicking and no more covert or obvious actions stating that they are pro PG&E and anti MUD. She has heard for the past month that the City of Brisbane was going to publish an article about the MUD in the Star. It is a public record and she should know what is being circulated to every resident in Brisbane. She does not think that the Resolution alone is fine as it stands as it does not protect the public interest.

Chair Eisenberg stated to the City of Brisbane that this is an excellent Resolution of both Brisbane and San Francisco's interests. The Chair would like to renew the invitation for the Commission to meet with Brisbane. He hopes with the context of the passage of this Resolution that Brisbane sees that the possibility of reducing electrical rates is a benefit to Brisbane citizens and that is the intention of the Commission.

Vote:

AYES: Commissioner Gonzalez and Commissioner McGoldrick; Chair Eisenberg

ACTION: PASSED

#### 10. Future Agenda Items.

Gloria L. Young, Executive Officer, stated that there are a number of items for the suggested May 18 meeting date as follows:

1. The final budget will need to be approved in May
2. Application for the formation of the San Francisco Brisbane MUD sponsored by Supervisor Gonzalez.
3. Adoption of policies regarding disclosure requirements
4. Legal counsel appointment
5. Scope of work for the Sphere of Influence
6. Approval for the process of selecting the consultant of the Sphere of Influence

Chair Eisenberg advised the Commission that Paul Nathan Jr. is a student at the University of San Francisco (USF) who asked if he could do a free internship. Chair Eisenberg asked him to obtain a list of all the City non-profit organizations and to call them to find out what the impacts of the increased utility rates are. He did a terrific job and gave him a two-page report that he would like to put on the agenda for the next meeting. He found out that the Suicide Prevention Crisis Center and the Haight Ashbury Clinic are laying off people because of utility bills, and that Laguna Honda is projecting an increase of \$5,000,000 in their electrical bills this year. He found out through calling a series of non profits that they are willing to discuss these issues with the Commission and to give them vital information that they need to base their future decisions. He suggests that the Commission address a formal request to USF to provide them with this internship program and invite a professor from USF to the next Commission meeting.

Supervisor McGoldrick concurred.

No Public Comment:

#### 11. Public Comment on Items not on the Agenda.

Ernestine Weiss left copies with the Commission regarding a statement from a distinguished colleague named Brian Brown who is on the Mayor's Infrastructure Task Force where he makes a lot of wonderful recommendations for immediate action to lower utility rates. She would like to know if it is under the Commission's jurisdiction to take emergency measures before the measure goes on the ballot.

Chair Eisenberg stated that the Commission does not have emergency control measures.

Ernestine Weiss asked whom this issue could be brought to.

Chair Eisenberg suggested the Board of Supervisors.

Harold Toppel, City Attorney, Brisbane stated there is a memorandum in the Commission packet from Mr. Hobson regarding the invitation for a joint meeting. He wants to clarify that the memorandum indicates that Mr. Toppel made the decision for a joint meeting on behalf of Brisbane. That is not the case. There was a public meeting by the Brisbane City Council. The Council decided it was premature to have a meeting because they are waiting for more information to be provided on the proposal. The City Council is not opposed to the meeting.

No further Public Comment

12. Adjournment: The meeting adjourned at 12:23 p.m. The next meeting of the LAFCo Commission is on May 18.



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City and County of San Francisco

## Local Agency Formation Commission



### May 18, 2001 Meeting Information

#### AGENDA

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence.

These items will be available for review at City Hall, Room 244, Reception Desk.

#### Special Meeting

Friday, May 18, 2001 at 10:00 a.m.

City Hall, Room 263

Chairperson: Eisenberg

Members: Commissioners Ammiano, Maxwell, Daly, McGoldrick

Alternate: Commissioner Gonzalez

Clerk: Gregoire Hobson

#### SPECIAL AGENDA

(There will be public comment on each item)

##### 1. Call to Order and Roll Call

2. Public Hearing: Discussion and adoption of the final SF LAFCo 2001-2002 Fiscal Year Budget (Government Code Section 56381)

3. Public Hearing: Discussion and adoption of Policies and Procedures to require the disclosure of contributions, expenditures, and independent expenditures made in support of or opposition to a proposal for a change of organization or reorganization. Government Code Sections 56021, 56069, 56073, 56100.1, 56300(b), and 81000 et seq.

4. Public Hearing: Discussion and adoption of Policies and Procedures to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by members, staff or consultants of the SF LAFCo. Government Code Section 56300(c)

5. Public Hearing: Discussion and adoption of Policies and Procedures for General Operations of SF LAFCo

6. Resolution appointing the San Francisco City Attorney Legal Counsel for the San Francisco Local Agency Formation Commission (Continued from 4/5/01)

7. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and Analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane (Continued from 4/5/01)

8. Discussion and approval of the process for selecting and contracting with the consultant for the Sphere of Influence Study (Continued from 4/5/01)

9. Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utilities Commission and other agencies (Continued from 4/5/01)

10. Supervisors Newsom and Hall resolution requesting the San Francisco Local Agency Formation Commission to assist the Board of Supervisors with a full analysis of public power options and conservation/energy efficiency measures so that the Board may use this information to determine the best way of providing reliable, cost effective, environmentally responsible electric service to San Francisco

11. Discussion of the University of San Francisco's Internship Program

12. Future Agenda Items

13. Public Comment on Items not on the Agenda

14. Adjournment

#### IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

#### DISABILITY ACCESS

Both the Committee Room (Room 263) and the Legislative Chamber are wheelchair accessible. The closest accessible BART Station is Civic Center, three blocks from City Hall. Accessible MUNI lines serving this location are: #42 Downtown Loop, and the #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call 923-6142.

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**San Francisco  
Local Agency  
Formation Commission**

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**MINUTES**

**Special Meeting  
Friday, May 18, 2001 at 10:00 a.m.  
City Hall, Room 263**

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano, Maxwell, Daly, and McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Gregoire Hobson

**SPECIAL AGENDA**

(There will be public comment on each item)

**1. Call to Order and Roll Call**

The meeting was called to order by Chair Eisenberg at 10:12 a.m.

Members Present: Commissioners Daly, Gonzalez, Maxwell, and McGoldrick; and Chair Eisenberg

Members Absent: Commissioner Ammiano

**2. Public Hearing: Discussion and adoption of the final SF LAFCo 2001-2002 Fiscal Year Budget (Government Code Section 56381).**

No Public Comment:

Commissioner Daly questioned whether the first budget-line item, Salary for Personnel, a figure of \$72,000 is the Executive Officer's salary?

Gloria L. Young, Executive Officer, stated that this amount was identified as salaries, whether hers or whether or not they needed to hire staff. Her salary has not been effected yet in respect to this position.

Commissioner Daly asked the Executive Officer if there are discussions about remunerating the Executive Officer for work as LAFCo Executive Officer currently in her contract as Clerk to the Board.

Gloria L. Young, Executive Officer stated that President Ammiano requested by memo in October that she takes the Executive Officer position in an interim capacity. She accepted that responsibility. He then requested that she take the position of Executive Officer as a permanent position. The LAFCo Commission approved the permanent appointment in November. Supervisor Ammiano then requested by ordinance to the Board of Supervisors Office, which was prepared by the City Attorney's Office, that the position be added on a formal basis to her position as the Clerk of the Board. That ordinance was approved and the section of the ordinance did talk about remuneration for the position that she believes is in discussion with the Board. It would be retroactive when it becomes effective.

Chair Eisenberg asked how the Board of Supervisors has the jurisdiction to determine the compensation of the Executive Officer's services for LAFCo?

Gloria L. Young, Executive Officer stated that the salary was based on other jurisdictions such as Santa Clara and several counties throughout the state where the Executive Officer is already on staff and it becomes an intradepartmental responsibility. There is this relationship that if the person serves in another position with the City, that the governing body of that position has a role in effecting that salary. She is also part of the Municipal Executive Association and that relationship needs to be included as well.

Chair Eisenberg asked if the \$72,000 is designated or funds that are set aside.

Gloria L. Young, Executive Officer stated that it is funds that are set aside.

Chair Eisenberg stated that since the Board of Supervisors provided the money to LAFCo and since the Executive Officer works for the Board of Supervisors, the Board will give the Commission a suggestion as to how they should allocate additional funds for the Executive Officer's additional compensation. It would be the Commission's decision, but on a collegial basis the Commission would get guidance from the Board of Supervisors.

Gloria L. Young, Executive Officer stated that the revised budget reflects the amendment from the April meeting to increase the Commissioner's stipend. An eighteen meeting period was selected, twelve months, once a month and if the Commission needed additional meetings because of additional work. The Board's budget that included funds for LAFCo was submitted in February. The LAFCo funds have been set aside in a sub fund rather than an operating budget fund. The budget needed to be a base budget when it was submitted to the Mayor's Office. The funds for LAFCo are set aside in a project fund, which means that no additional funds have

been added to that fund. With the consideration of the Board, the remainder of the reserve that was set-aside during 2000-2001 is the funds that will carry over to the next fiscal year. The \$604,000 that was not expended is the funds that are the 2001-2002 SF LAFCo budget.

Chair Eisenberg asked if the Executive Officer is referencing the present budget in front of the Commission?

Gloria L. Young, Executive Officer concurred and stated that if LAFCo does not spend excessively out of the funds that are currently there this fiscal year, then the Commission will have the \$458,000 in the 2001-2002 budget.

Chair Eisenberg asked if that means that LAFCo would have a \$200,000 surplus?

Gloria L. Young, Executive Officer, stated that a consultant has not been hired yet to do the Sphere of Influence Study, so she does not anticipate a surplus.

Commissioner Gonzalez asked the Executive Officer about Item 7 on the agenda that they will be discussing the adoption of the proposed work for the Sphere of Influence Study. He noticed that the focus right now is on energy. He is wondering in so far that it is limited to that, if that has been taken into account in the budget, or does the Commission have power once they approve the budget to expand the Sphere of Influence?

Gloria L. Young, Executive Officer, stated that LAFCo does have the authority to expand the budget and request a change to the amount that is recommended.

Supervisor Gonzalez asked how the Commission is basing the conclusion that some of the work such as the Sphere of Influence or CEQA review can be done for this amount of money? The work has not been put out to bid.

Gloria L. Young, Executive Officer, stated that the work has not been put out to bid. If they receive proposals back that exceed the funds that are in reserve and allocated to transfer into Fiscal Year 2001-2002, they would be in the position of requesting a supplemental budget from the Board of Supervisors. The Controller's Office has set these funds aside in a sub fund program and what goes over into the 2001-2002 budget is what is remaining from the 2000-2001 fiscal year budget. So far, the \$604,000 that has been placed in reserve has not been used. If the scope of the study was to be expanded and the Commission would use a fee such as \$300,000, that would leave the Commission with a balance of \$304,000 for the next fiscal year. That figure would be less than what they budgeted for this fiscal year. When these funds were budgeted, a full CEQA review was expected. That is not monies that are being expended because they received the Certification of Determination of Exemption from Environmental Review from the Planning Department based on Supervisor Gonzalez's Resolution.

Supervisor Gonzalez asked if there have been comparable studies in other counties and that there should be more specifics before the budget is approved.

Chair Eisenberg stated that he doesn't think the Executive Officer can answer those questions. You ask the Executive Officer to peg a figure, take testimony, and then put it out for bid to see if anyone is interested in doing the work.

Gloria L. Young, Executive Officer stated that through conversations with members of the American Public Power Association (APPA) and California Municipal Utilities Association (CMUA), \$200,000 and \$300,000 seemed reasonable for a consultant to do the study based on the scope of services that the Commission has before them today. The dollar amount required for the scope of work for the Sphere of Influence was developed with the City Attorney's Office and reviewed by a another agency's Utility District and by APPA members.

Commissioner Gonzalez asked to discuss the matter of legal services and what is being budgeted in conjunction with Item 6, Resolution appointing the San Francisco City Attorney as legal counsel for SF LAFCo, before final action is taken on the budget.

Gloria L. Young, Executive Officer, stated that the funds in the budget are based on the use of internal services. Approval depends on whether the Commission wants to use funds for internal or external services.

Public Comment Closed

Chair Eisenberg asked if the Commission could approve the rest of the budget and take the legal services item out of the budget and defer it to Item 6.

Gloria L. Young, Executive Officer stated that the Commission would have to speak to the Deputy City Attorney. If you close the public hearing and adopt the budget, she is not sure that if you amend the budget that you would not need to do another public hearing notice to reopen the item. The simplest way is to continue the budget until Item 6 has been discussed.

Chair Eisenberg stated that the adoption of the final SF LAFCo 2001-2002 Fiscal Year Budget would be continued until the Commission discusses Item 6, Resolution appointing the San Francisco City Attorney as Legal Counsel for SF LAFCo.

3. Public Hearing: Discussion and adoption of Policies and Procedures to require the disclosure of contributions, expenditures, and independent expenditures made in support of or opposition to a proposal for a change of organization or reorganization. Government Code Sections 56021, 56069, 56073, 56100.1, 56300(b), and 81000 et seq.



Gloria L. Young, Executive Officer stated that Item 3 is a result of the Cortese-Knox-Hertzberg bill that states there be policies and procedures to require the disclosure of contributions, expenditures, and independent expenditures made in support of or opposition to a proposal. The Commission has the opportunity to request that she come back with policies and procedures at the next meeting. This item is a required public hearing. If the Commission chooses not to adopt formal policies and procedures at this meeting or to request the Executive Officer to prepare policies and procedures for adoption, policies and procedures would need to be in effect at the time the MUD petition is on the ballot. The way the bill reads is that Government Code Section 81000 et seq. will apply to measures placed on the ballot regardless of whether the Commission adopts formal policies and procedures requiring disclosure.

No Public Comment

Gloria L. Young, Executive Officer stated that since there is nothing effective right now, the Commission can wait and at the time the measure is on the ballot, she could provide procedures and policies.

Chair Eisenberg moved to continue this item to the Call of the Chair; Commissioner Maxwell seconded.

VOTE:

AYES: Commissioners Gonzalez, Maxwell, and Chair Eisenberg

NOES: None

ABSENT: Commissioners Ammiano, Daly, and McGoldrick

4. Public Hearing: Discussion and adoption of Policies and Procedures to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by members, staff or consultants of the SF LAFCo. Government Code Section 56300(c).

No Public Comment

Commissioner Daly and McGoldrick are present.

Chair Eisenberg stated that these are Policies and Procedures that were worked out by the Executive Officer, previously reviewed by the Commission, and in accord with the necessary policies and procedures.

Gloria L. Young, Executive Officer stated that the policies are not before the Commission at this time. This item is to indicate that there is a requirement that the

Commission hold a public hearing to determine whether the Commission wants the Executive Officer to prepare policies and procedures.

Public Comment Closed.

Chair Eisenberg moved to request that the Executive Officer prepare Policies and Procedures; Commissioner Daly seconded.

VOTE:

AYES: Commissioners Daly, Gonzalez, McGoldrick, and Maxwell and  
Chair Eisenberg

NOES: None

5. Public Hearing: Discussion and adoption of Policies and Procedures for General Operations of SF LAFCo.

Gloria L. Young, Executive Officer, stated that these General Policies and Procedures for general operations of SF LAFCo were prepared in conjunction with the City Attorney's Office, and they are a compilation of policies and procedures of other LAFCo's throughout the state. Her recommendation to the Commission is to continue this item because it is an extensive document that was received by the Commission this week and take public comment. The policies and procedure could be approved at a future meeting.

No Public Comment

Commissioner McGoldrick asked the Commission if there is anything that should be highlighted.

Dorji Roberts, Deputy City Attorney stated that he compiled these policies and procedures after looking at LAFCo policies and procedures from a number of different counties throughout the state. There are a number of policies in this 20-page document. He recommends that each of the Commissioners take the time to review them, if the Commissioner has questions, contact the Executive Officer or himself, and if there are revisions, they would be happy to come back with a new draft. Some of them will be policy decisions for the Commission to make. There are certain policies contained within this document that derive directly from the new Cortese-Knox-Hertzberg legislation that would be mandatory regardless whether they are set forth in this document.

Chair Eisenberg stated that when they went through these policies and procedures in November, the Commission developed and adopted a rule specific to MUD. He hasn't reviewed the policies in detail, but he is assuming that there is nothing in these policies and procedures that would abrogate that rule.

Dorji Roberts, Deputy City Attorney stated that these procedures are different from those developed last year. Last year's policies dealt directly with the processing of a petition to form a Municipal Utility District. These are general policies and guidelines that govern a variety of different types of proposals that may come before LAFCo in the future. There are no such proposals before the Commission at this time.

Chair Eisenberg asked if there is anything that is retroactive about these Rules.

Dorji Roberts, Deputy City Attorney stated that was correct.

Commissioner Gonzalez asked if the Deputy City Attorney could address the Policies and Procedures, LAFCo Budget, Section 1.61. How common is it in the other policies and procedures of other LAFCOs to mandate that the budget be equal to or greater than the budget adopted the previous fiscal year?

Dorji Roberts, Deputy City Attorney stated that it comes directly from the Cortese-Knox-Hertzberg legislation, and not a policy that he adopted from other counties. The legislation states that the Commission must make a finding that any reduction in the LAFCo funding would nonetheless allow the Commission to fulfill all of its obligations and programs under the LAFCo law.

Commissioner Gonzalez asked if Cortese-Knox speaks to LAFCo being under the purview of the Board of Supervisors.

Dorji Roberts, Deputy City Attorney, stated that LAFCo is an independent agency created under state law and it is not captive of the Board of Supervisors. All other counties are not consolidated cities and counties, and the representation is more diverse as far as representatives from cities within the county and representatives of the county government. Many LAFCo's in the other counties also have district representation. We are in a unique position being a consolidated City and County, and the Board of Supervisors is the legislative body for the City and the County.

Commissioner Gonzalez asked to clarify Policies and Procedures, Section 4.42, "the proposed entity shall be able to provide sufficient revenue to provide the requested service."

Dorji Roberts, Deputy City Attorney stated that the Commission would pass judgement upon whether to approve the formation of a special district and whether that district has an anticipated revenue stream that would be sufficient to provide service in the geographic area it would be serving.

Commissioner Gonzalez asked if the LAFCO has the ability to do any sort of revenue bond capacity.



Dorji Roberts, Deputy City Attorney stated that the LAFCo would not be issuing revenue bonds. If revenue bonding were one of the sources of revenue that would be available to a particular type of district that would be proposed to be formed, then financial analyses would be submitted to the LAFCo with the application for LAFCo approval to form that district. It would be up to the Commission to review those documents, determine if they are adequate and, if the Commission felt comfortable that the revenues that would be available to the district, including possible revenue bonding, would be sufficient to provide the services.

Commissioner Gonzalez stated that without revenue bond capacity, Section 4.42 would be an impediment to a determination in the area of electricity.

Dorji Roberts, Deputy City Attorney stated specifically in regards to energy that it is not LAFCo that would issue the bonds to obtain the money and provide the money to a new district--it would be the district itself. The Commission would have to look at the enabling legislation in state law to see if the district was authorized to provide those types of bonds.

Chair Eisenberg stated that the MUD enabling legislation does provide for the sale of bonds.

Supervisor Gonzalez inquired about Section 2.6, Special Studies, the phrase, "discouragement of urban sprawl" and asked if that is from Cortese-Knox.

Dorji Roberts, Deputy City Attorney stated that Section 2.6 was from Cortese-Knox. In San Francisco, although there is some open space left, we are substantially built out, so that is not for the most part going to be a consideration in the City and County of San Francisco. There are two other corrections that have to be made to the policies and procedures that he takes responsibility for:

1. Section 1.41, page 5, the Room Number 263 where the Commission normally meets has been left out.
2. Section 5, Definitions. As he first drafted the policies and procedures, he intended to put forth the definitions from the Cortese-Knox Act, but it ended up being twenty pages long, so he thought he would incorporate the definitions by reference. The last sentence should then be removed.

Chair Eisenberg asked the Deputy City Attorney about the retroactivity of these procedures. He thinks that he said that nothing is pending before LAFCo at this point. Is Supervisor Gonzalez's Resolution pending before the Commission at this point?

Dorji Roberts, Deputy City Attorney, stated that he meant no proposals other than the formation of a MUD which is governed by the policies which were already adopted by the Commission.

Chair Eisenberg asked if it is the City Attorney's interpretation of these policies and procedures that the shadow MUD is not controlled by these Rules?

Dorji Roberts, Deputy City Attorney stated it is not, to the extent that this Commission has adopted specific procedures governing MUD proposals. He did not go back and review those specific policies, but the intent was not to put anything in the policies and procedures other than general LAFCo procedures. There is a provision here that if there are policies and procedures in this document that are not relevant to a particular proposal, the Commission can ignore those provisions.

Chair Eisenberg stated that he thinks the rule needs to be checked because he is not sure it applies to the shadow MUD. He knows it applied to the initial MUD.

Dorji Roberts, Deputy City Attorney said he would review the matter and work with the Commission to develop rules that would adequately address this issue.

Chair Eisenberg stated that he thinks that the rule they developed in November referred to petitions signed by petitioners and not to Board resolutions. He thinks the distinction should be made that Board Resolutions would be captured by these rules, but that particular petition was not at that time.

Dorji Roberts, Deputy City Attorney stated that it would be appropriate for the Commission to review these rules to see if there is anything in them that is in odds with what the Commission would like to do with the shadow MUD.

Commissioner McGoldrick inquired about Section 1.25 that states that "alternate Commissioners do not routinely participate in closed sessions." Does "do not routinely" exclude the possibility because he thinks it would be acceptable for an alternate Commissioner to participate.

Dorji Roberts, Deputy City Attorney, stated it would be appropriate for an alternate member to sit in if needed to make a quorum. Routinely, they would not sit in on closed sessions where you had your regular Commissioners available to hear and take action on a matter.

Chair Eisenberg asked if that sentence was needed in the policies and procedures.

Commissioner McGoldrick stated there is the possibility that an issue is being discussed in closed session in which an alternate may not need to cast a vote, but the alternate may need that information. The alternate could participate but would not vote because there was a full-five vote. He would like an alternate to be part of closed sessions.

Dorji Roberts, Deputy City Attorney stated that would be another example of where it would be appropriate for an alternate to sit in a closed session meeting. The Commission can have the provision taken out.

Commissioner Gonzalez asked if the Commissioner's term is four years.

Dorji Roberts, Deputy City Attorney stated that was correct.

Chair Eisenberg continued this item to the next meeting, asked the Deputy City Attorney to correct the sentence in reference to alternate Commissioners in Section 1.25, and provide the Commission with the corrections.

6. Resolution appointing the San Francisco City Attorney Legal Counsel for the San Francisco Local Agency Formation Commission (Continued from 4/5/01).

#### Public Comment

Bruce Brugman, Bay Guardian asked whether the City Attorney has answered the questions as requested at the April 5 meeting.

Chair Eisenberg replied that the Commission has not received a reply from the City Attorney's Office.

Bruce Brugman, Bay Guardian stated that historically, the City Attorney has a conflict with this issue and the Commission has to deal with this issue. He does not see how legal counsel can be appointed without getting answers to those questions on the record. He would check to see if the minutes from the last meeting reflect the questions he discussed and make sure they are available for inspection.

Richard Ow stated that the City Attorney is delaying the processing of a MUD. Lately, they are cooperating with this Commission somewhat. The past record indicates that we cannot depend on the legal side of the City Attorney. He asks this Commission to appoint independent attorneys other than the City Attorney because the City Attorney has a bad record in regards to a MUD.

#### Public Comment Closed

Commissioner McGoldrick asked that there be an agenda item to hear from the City Attorney's Office to clear up the allegations of a conflict of interest. He thinks the Commission should proceed along those lines. He has not seen the Minutes from the previous meeting.

Gloria L. Young, Executive Officer stated that the Minutes would be available at the next meeting. They have had a loss of staff in the office and Greg Hobson has been appointed as Deputy Clerk.

Dorji Roberts, Deputy City Attorney stated that he was not at the last meeting. Paula Jesson had been covering the hearings, but took ill and will be out indefinitely. He requested specific information as to what type of conflicts are referenced.

Commissioner Gonzalez stated that two items were raised. One was the relationship with PG&E through the City Attorney Louise Renne's husband's relationship with the law firm, Cooley Godward. The second item was the representation by the City Attorney both at the Board of Supervisors and the LAFCo. At the time the original MUD petition was placed on the ballot, the attorney representing LAFCo was visiting individual supervisors and speaking at the full Board of Supervisors about activity being taken by this body.

Chair Eisenberg corrected Commissioner Gonzalez and stated that what actually happened was that Mr. Roberts formed his own opinion, and Mr. Delventhal gave the opinion at the Board of Supervisors. The same office was representing LAFCo, but Mr. Delventhal stood up at the Board of Supervisors and stated he did not agree with what LAFCo did. They are trying to figure out how one office can give advice to one Board saying that the other Board shouldn't have done what it did. Ms. Jesson stated that the Commission would receive something in writing at address these issues, and the Commission needs something in writing.

Dorji Roberts, Deputy City Attorney stated that both the Board and LAFCo would not present a conflict. It would be conceivable in some circumstances the interests of San Francisco and the LAFCo might differ in which case both the factual and legal issues would have to be looked at. There was recently a study performed by CALAFCo, the umbrella organization for LAFCo's around the state. Of the counties that responded to this survey, 25 of 31 counties continue to use county counsel rather than obtaining independent counsel. Prior to January 1, the City Attorney's Office was counsel for LAFCo by default in the absence of the appointment of counsel by the Commission. Since that time, there has been an obligation under the Cortese-Knox-Hertzberg law for this Commission to appoint counsel. The Commission is free to appoint the City Attorney or outside counsel either for all or specific matters.

Commissioner Gonzalez stated that the City Attorney was in the unusual position where they were giving advice to both the Board and representing the LAFCo and taking a particular position. This body specifically addressed the conflict concerns at the last meeting. He would not want to continue this item and would like to take a recess and have the Deputy City Attorney bring someone from his office to address the questions.

Chair Eisenberg stated that after the last meeting, Ms. Jesson had a medical situation occur. Under normal circumstances, he would agree with Commissioner Gonzalez although the City Attorney is saying they are not prepared to address the item. He would not want to bring in someone else from the City Attorney's office



that is not prepared to address these questions. They had asked for written answers to specific questions and the transcript of that meeting is available.

Commissioner Gonzalez stated that he needs to hear from the City Attorney, Ms. Renne on the conflict. He and Mr. Delventhal have handled this matter at length.

Chair Eisenberg stated the problem he has is that after watching many of these hearings, the City Attorney will give the Commission general ethics advice. The Commission asked for specific rules. One question asked specifically is whether there is a State Bar or Ethics opinion. Second is whether the City Attorney should be answering these questions, or should these questions be referred to outside counsel. Third, the Commission specifically asked about State Bar rules. Fourth, the Commission asked if the Commission should consult the hotline. Fifth, how can it happen that their attorney, the City Attorney, ends up at a Board of Supervisors hearing and says that what the Commission did was wrong. They didn't have an attorney who was at the Board of Supervisors saying what they did was right. Sixth, under those circumstances, isn't the City Attorney required to advise the Commission in writing that he or she has a problem with their conclusion, and advise them that they have to have independent counsel. He thinks Mr. Roberts is saying that he is not prepared to answer those questions. He would like to have Mr. Delventhal answer those questions in depth, but he does not think it is appropriate to get Mr. Delventhal and bring him in without an opportunity to prepare.

Commissioner Gonzalez disagreed with Chair Eisenberg in that the items raised were not specific questions that the Commission was asking the City Attorney to address—these were components of factors that the Commission said raised the question of a potential conflict. He thinks the question of a conflict should not be addressed by outside counsel, but should be addressed by our counsel right now. He thinks this is a simple matter for Ms. Renne or a representative of her office who has been dealing with matters related to a Municipal Utility District for over a decade to step in and address why her office is saying there is not a conflict. He does not think that the illness of an individual attorney who often times was filling in for other attorneys who had been handling this matter justifies a continuation of a question of a conflict that can be answered very quickly.

Dorji Roberts, Deputy City Attorney stated that generally speaking that there is no conflict in the City Attorney's Office in representing both the Board of Supervisors and the LAFCo. Whether specific circumstances may arise where the interests of San Francisco and the Commission may differ, those would then have to be addressed at that time. The City Attorney has an Ethics Team that investigates both the legal and factual issues involved in conflicts. If there are questions, they may seek outside assistance including going to the State Bar to ask for their assistance. The City Attorney's response could vary if there is a conflict. There could be an imposition of an ethical or due process wall or retaining of outside counsel. Their office does have arrangements with other public law offices in the event that conflicts arise in order to try to minimize the cost of hiring outside private

counsel. Without a specific factual circumstance, he cannot tell the Commission whether there was a specific conflict.

Chair Eisenberg stated that Commissioner Gonzalez is asking Dorji Roberts to go to the City Attorney's Office and bring somebody back to answer specific questions.

Dorji Roberts, City Attorney stated that both Louise Renne and Buck Delventhal are not in the office and are on vacation.

Commissioner Maxwell asked Commissioner Gonzalez who he wants to answer these questions, whether it is Louise Renne or a particular person. If so, it seems to her that that person should be here to answer the questions.

Commissioner Gonzalez stated that Louise Renne has to answer the question.

Commissioner Maxwell stated that Louise Renne is not here and cannot answer the questions. She recommended that a special meeting be called to have the questions answered.

Dorji Roberts, Deputy City Attorney will inform the Commissioners through the Executive Officer when Louise Renne will return from vacation.

Gloria L. Young, Executive Officer stated that since this is one of the budget items, the Commission might want to call a special meeting prior to June 15 when the budget has to be approved and prior to June 1 when it is coming over from the Mayor's Office.

Chair Eisenberg stated that the item in the budget says \$100,000 for legal counsel, but does not specifically state it is for the City Attorney. The Commission can use the funds for the City Attorney or for independent counsel.

Gloria L. Young, Executive Officer stated that when she estimated the \$100,000 for legal counsel, it was based on internal counsel support. She looked at the average fees within the City and County of San Francisco, which she believes to be \$140 to \$150 an hour. Compared to outside resources that figure may go up. There would be a limit as to who could be used from outside counsel.

Commissioner McGoldrick asked what could be done internally to separate the person who could be involved in an identified conflict of interest.

Dorji Roberts, Deputy City Attorney stated that it is possible to impose a due process or an ethical wall where the one deputy who had the conflict would not have access to the files or discuss matters with the deputy who is working in the area.

Public Comment Reopened



Bruce Brugman, Bay Guardian stated that the City Attorney has helped defend PG&E for eighty years. He comes before this group and asks basic questions and the City Attorney, not Dorji Roberts who is a representative of the City Attorney, treats this group with contempt and has no answers. This one is in the hospital, the other one is on vacation, and there is no one who can answer Commissioner Gonzalez's question. Bring somebody into the office that can answer these questions. The Commission should ask the real City Attorney to show cause why they should represent this group, and not represent PG&E as they have all these years. They should either show cause or the Commission should bring in an independent attorney.

Public Comment Closed

Commissioner Daly stated that he is prepared to vote against this Resolution at this time and would be open to continuing this item to a special meeting where the City Attorney, Ms. Renne can appear before the Commission.

Chair Eisenberg stated that the City Attorney has no testimony before the Commission supporting the Resolution.

Supervisor Gonzalez stated that he thinks it is fair to give the City Attorney an opportunity to respond to the allegations.

Chair Eisenberg stated that he does not know what the dollar amount is, but as he understands it they have been using outside counsel for the last five or six months which is Mr. Mihaly.

Dorji Roberts, Deputy City Attorney stated that Mr. Marc Mihaly has been retained and paid by the City Attorney's Office to provide consultation regarding LAFCo matters.

Chair Eisenberg asked if Mr. Mihaly would be available to the Commission at the next meeting if this Resolution to appoint the City Attorney as legal counsel was voted down.

Dorji Roberts, Deputy City Attorney stated that the question would have to be posed to Mr. Mihaly.

Chair Eisenberg asked if the Commission is paying for Mr. Mihaly's services as a consultant to the City Attorney.

Dorji Roberts, Deputy City Attorney stated that the City Attorney is paying for Mr. Mihaly's services.

Chair Eisenberg asked if the City Attorney is being reimbursed through the Commission's budget?

Dorji Roberts, Deputy City Attorney stated he has not been involved in the financial matters with respect to their representation.

Commissioner Maxwell asked if the Commission could ask the Executive Officer to find out what it would cost for outside counsel and to compare costs. If people feel strange about the City Attorney, we should look into getting outside counsel.

Commissioner Gonzalez stated that the City Attorney is contracting with another attorney to provide certain services. Without speaking to the quality of the services, the purpose of the Commission hiring outside counsel is for the purpose of not hiring outside counsel that has a relationship with the entity that has a conflict.

Dorji Roberts, Deputy City Attorney stated that if they wanted to hire outside counsel, it would be up to the Commission and not the City Attorney to hire outside counsel.

Chair Eisenberg stated a professionalism concern to Mr. Roberts. This Commission is entitled to the most professional legal advice it can get. He has seen a change in the attitude of the City Attorney, but he believes in the last couple of months that both deputies have been extremely cooperative and helpful. The deputies have to be separated from the office. He thinks it is vital that the Commission continues with the advice of the deputies because they are guiding the Commission through an unknown process. This Commission is a new Commission and needs legal advice. He commends both Mr. Roberts and Ms. Jesson for their work. The Commission has policies and procedures and is moving along quite rapidly. He would not be prepared to vote against the Resolution at this time because he respects the professionalism of the deputies. The City Attorney was required today to show cause with respect to a series of serious ethical questions that were asked at the last meeting. The boss is on vacation. A clear and firm message has to be sent to the boss that if the City Attorney continues to be the City Attorney for this Commission at its next hearing, the Commission expects detailed analysis and answers to every one of the questions that were asked at the last meeting. It would be the height of unprofessionalism if the questions were not answered in detail. At that point the Commission puts the City Attorney on notice that this Resolution may be voted down. The Commissioners have stated that they feel as if their time has been wasted because this item has not been addressed.

Commissioner McGoldrick asked Mr. Brugman for his opinion.

Bruce Brugman, Bay Guardian stated that out of this meeting came the fact publicly that the City Attorney has an attorney, Marc Mihaly who is advising them on LAFCo. Or is he? Has he ever been to a meeting? Do you know how much he is being

paid? Why is he not here today? He is supposed to be the expert and he is secretly meeting with the City Attorney probably to ruin the process.

Chair Eisenberg stated that he has met with Mr. Mihaly and he charges approximately \$450 an hour and that is good reason not to have him here.

**ACTION:** Chair Eisenberg is specifically asking the City Attorney to appear personally and respond with written authorities to back up her opinion regarding the issues discussed.

Item 2, Public Hearing: Discussion and adoption of the final SF LAFCo 2001-2002 Fiscal Year Budget (Government Code Section 56381) has been recalled.

Chair Eisenberg stated the Executive Officer should note that there does not need to be a change in the budget with the provision that the \$100,000 is for legal counsel, not for specific legal counsel.

Gloria L. Young, Executive Officer stated that when Commissioner Daly asked about the salary and benefits, that \$72,000 was not strictly for the Executive Officer--it also included salary for a temporary clerical support staff.

She would refer to Commissioner Gonzalez's report on the Policies and Procedures, Section 1.6 on the LAFCo's budget. The Commission is in an odd situation with the City and County of San Francisco because the LAFCo budget is part of the Board of Supervisor's budget--it is not a separate entity budget. Therefore, it affects the overall baseline budget because a part of the Cortese-Knox-Hertzberg law indicates that the budget you adopt this year becomes your base budget for future years. Section 1.62 specifically indicates that LAFCo shall cooperate with the City and County as much as possible to accept budget cuts when necessary and when the requested cuts are compatible with the annual budget. That is based on the fact that the Cortese-Knox-Hertzberg bill sets this up as your baseline budget.

Commissioner Gonzalez stated that the report from the Planning Department that relates to the CEQA review shows exempt status.

Gloria L. Young, Executive Officer stated that she just received the CEQA review the other day and had it distributed to the Commissioners. She had spoken to the Planning Director a couple of weeks ago. Because of Supervisor Gonzalez's Resolution, the Commission is going through all of those processes with respect to the MUD. The CEQA review relates specifically to that MUD proposal that is exempt at this time.

Commissioner Gonzalez asked what the \$100,000 line item budget that is set aside for CEQA relates to.

Gloria L. Young, Executive Officer stated that the \$100,000 is for LAFCo to do a Sphere of Influence Study on a number of issues. If in the next fiscal year, the Commission chose to do an Environmental Impact Report, \$100,000 has been left in the budget. When the amount was first put in it the budget, it related specifically to the MUD proposal.

Commissioner Gonzalez stated that as he understood the budget, the Sphere of Influence was being done under consulting services.

Gloria L. Young, Executive Officer stated that she first did this budget before the Commission back in November had asked for a Sphere of Influence Study. The budget was based on what was in other counties throughout the state. Other counties have separate lines for CEQA reviews and consultants because of the proposals that can come before this body.

Chair Eisenberg asked if the \$100,000 is specifically for the consultant to do the scope of work for the Sphere of Influence.

Gloria L. Young, Executive Officer stated that the \$100,000 was her estimate in November and has been carried forward. The estimate was based on the kinds of consulting services that were used in other districts and other LAFCo's. Given the fact that the energy Sphere of Influence Study probably will be more than that, they would reallocate funds in the \$604,00 budget based on the kinds of proposals that are received. If one costs more than the other, dollars would be transferred or she would come back to the Board to ask that funds be reallocated to the portion of the budget where the funds were needed.

Chair Eisenberg asked if the Commission would need the Board of Supervisors consent to reallocate funds as needed.

Gloria L. Young, Executive Officer stated that the funds are on reserve at this point and she is waiting for the Commission to approve the scope of work for the Sphere of Influence and the consultant's selection process. She would then request that the Board unreserve those funds that are currently on reserve.

Chair Eisenberg asked if the Board of Supervisors has the right to refuse to release the funds or is it automatic.

Gloria L. Young, Executive Officer stated that the funds are under the purview of the Board of Supervisors. The previous Board put those dollars on reserve because there were no proposals before them requesting those funds with respect to Sphere of Influence studies or CEQA guidelines.

Commissioner Eisenberg moved that the adoption of the final SF LAFCo 2001-2002 Fiscal Year Budget is passed with the understanding that legal services are not for



any specific legal services. That does not need to be in the Resolution; Commissioner Maxwell seconded.

VOTE:

AYES: Commissioners Gonzalez, McGoldrick, Maxwell and Chair Eisenberg

NOES: None

ABSENT: Commissioners Ammiano and Daly

ACTION: Passed

7. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and Analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane (Continued from 4/5/01).

Gloria L. Young, Executive Officer stated that the scope of work for the Sphere of Influence Study was presented to the Commission at its April 5 meeting. The Commission formed a Subcommittee, which included Chair Eisenberg and Commissioner McGoldrick. Chair Eisenberg and Commissioner McGoldrick met and suggested recommendations to the scope of work for the Sphere of Influence Study. On Monday, May 14, the staff met with Bernard Choden who had agreed to review and clarify the changes that he had outlined. Before the Commission are combined recommendations of the Subcommittee and Mr. Choden's comments in two versions. The Executive Officer read Chair Eisenberg and Commissioner McGoldrick's version. When the staff and Mr. Choden met on May 14 that included Deputy City Attorney Roberts, the Clerk Gregoire Hobson and herself, Mr. Choden indicated that there was consensus in adding additional changes. The copies reflecting those changes were passed out to the Commission and made available to the public.

Commissioner McGoldrick asked where the consensus came from.

Gloria L. Young, Executive Officer indicated that it was Mr. Choden's understanding that his comments were to be added to this document so she has given the Commission that second version.

Commissioner McGoldrick stated that the second version would be added for consideration. There was no discussion with the Subcommittee and Mr. Choden, but the other version would be worth consideration.

Gloria L. Young, Executive Officer read the changes that were added by Mr. Choden. She stated that a letter was received yesterday afternoon from the

Brisbane attorney and arrived too late to be included in the packet. Mr. Toppel indicates that he is unable to attend the SF LAFCo meeting today. The point he has made in his letter has been corrected by adding "Other Potential Areas" to the title.

Chair Eisenberg stated that the Executive Officer does not need to read the letter because the Commission has it in front of them and that Brisbane is mentioned on the second page of the document.

Commissioner McGoldrick asked if the version of the scope of work influenced by a meeting with Mr. Choden was subject to Brown Act requirements regarding general circulation to the public?

Gloria L. Young, Executive Officer stated that the document on the Sphere of Influence Study, which includes the Commission's comments as well as Mr. Choden's was part of the packet that went out to the Commission.

Commissioner McGoldrick requested changes be made to the larger draft document and discussed those changes with Chair Eisenberg and the Executive Officer with final agreement on revisions.

#### Public Comment

Bruce Brugman, Bay Guardian stated that this is a historic document that looks good to him. He can speak with expertise because they at the Guardian have journalistically been doing these feasibility studies and publishing them by others for years. They all come out and say that San Francisco should have public power and bring its own Hetch Hetchy power back. But everytime they say whoever did the study is not an expert and that PG&E has all the answers. He is suggesting that this is a great way to proceed and to make sure the consultant is qualified to do MUD work so it can hold up in the public court of opinion.

Richard Ow, CLUB member stated that they have been on their way to public power through MUD. This document if followed will get to the main point of less stoppage of electricity supply and a lower rate.

Paul Goerke, former Brisbane resident stated that Brisbane has proceeded San Francisco with a study of energy and electricity issues and should be available to the Commission as a resource. In his opinion, it is an unbiased study.

Chair Eisenberg stated that he would like to add additional changes to the draft document under Roman Numeral 2A as follows:

- Add Number 5, Renewable and Sustainable Alternatives.
- Add a small a, energy efficiency
- Add a small b, energy alternatives including but not limited to solar power, wind power and other known energy alternatives.



He thinks the document probably calls for an analysis, but he wants to call for those two items.

No further Public Comment.

Public Comment Closed.

Chair Eisenberg moved to adopt the proposed scope of work that include Mr. Choden's revisions for the Sphere of Influence Study and Analysis with amendments that have been made. Commissioner Maxwell seconded.

VOTE:

AYES: Commissioners McGoldrick, Maxwell, and Chair Eisenberg

NOES: None

ABSENT: Commissioners Ammiano, Daly, and Gonzalez

ACTION: Passed

8. Discussion and approval of the process for selecting and contracting with the consultant for the Sphere of Influence Study (Continued from 4/5/01)

Public Comment

No Public Comment

Gloria L. Young, Executive Officer stated that the LAFCo Subcommittee took action at its April 5 meeting to direct the Executive Officer to evaluate the consultants for the Sphere of Influence Study in compliance with APPA and other relevant criteria and present the evaluation to the LAFCo Subcommittee. The Subcommittee would then forward their recommendation for final decision to the Commission. The Subcommittee was made up of Commissioners Eisenberg and McGoldrick.

Chair Eisenberg moved to approve the process for selecting and contracting with the consultant for a Sphere of Influence Study; Commissioner McGoldrick seconded.

VOTE:

AYES: Commissioners McGoldrick, Maxwell and Chair Eisenberg

NOES: None

ABSENT: Commissioners Ammiano, Daly, and Gonzalez

ACTION: Passed

9. Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utilities Commission and other agencies (Continued from 4/5/01)

ACTION: Chair Eisenberg continued Item 9 to the next meeting.

10. Supervisors Newsom and Hall resolution requesting the San Francisco Local Agency Formation Commission to assist the Board of Supervisors with a full analysis of public power options and conservation/energy efficiency measures so that the Board may use this information to determine the best way of providing reliable cost effective, environmentally responsible electric service to San Francisco.

Gloria L. Young, Executive Officer stated that this Resolution is before the Board of Supervisors Public Utilities Deregulation Committee on Friday, May 25. On their agenda are a number of items associated with electricity and energy.

Chair Eisenberg requested that the Executive Officer advise the Committee that they have passed the Sphere of Influence Study and ask them if there is anything else that they are requesting. Item 10 is continued with the provision that the Executive Officer will advise the Board at the Board Meeting that it is the opinion of the Chair that the Sphere of Influence Study covers this Resolution. If there is something aside from the Sphere of Influence that they need, they can let the Commission know.

Commissioner McGoldrick asked if the Commission could forward a Resolution to the Board asking them to continue their consideration of this item because there are political implications, and this Commission has not had time to review the issue.

Chair Eisenberg stated that he is requesting that Supervisors Newsom and Hall appear at the next meeting to tell the Commission what they would like done after they have examined the Sphere of Influence.

Gloria L. Young, Executive Officer stated that she could send a memo to the Committee forwarding them the scope of work for the Sphere of Influence Study that the Commission just adopted. She would advise them that this item was continued and be present at the next meeting if they require information.

Commissioner McGoldrick stated that he was disappointed that no one is here to talk about this item, as it is an agenda item.

Chair Eisenberg stated that if the Supervisors do not appear at the next meeting, he would vote against the item because of fiscal considerations.

Gloria L. Young, Executive Officer stated that she welcomes any of the Commissioners that would like to attend the May 25 Board of Supervisors Public Utilities Deregulation Committee meeting.

ACTION: Continued to the next meeting.

11. Discussion of the University of San Francisco's Internship Program

ACTION: Continued to the next meeting.

12. Future Agenda Items

No Public Comment

No discussion on future agenda items.

13. Public Comment on Items not on the Agenda

No Public Comment

The meeting adjourned at 12:16 p.m. The next meeting is scheduled for June 22, 2001 at 9:00 a.m.

**San Francisco  
Local Agency  
Formation Commission**

City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. 415.554.4441  
Fax. 415.554.5163

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## **AGENDA**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting  
Friday, July 27, 2001 at 2:00 p.m.  
City Hall, Room 263**

Chairperson: Eisenberg  
Members: Commissioners Ammiano and McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Monica Fish

### **SPECIAL AGENDA**

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Approval of Minutes of the previous meetings from March 1, March 6, April 5, and May 18, 2001
3. Discussion of Contribution Limits for Candidates for the Municipal Utility District
4. Discussion of a Sphere of Influence for the City and County of San Francisco
5. SF LAFCO Subcommittee Recommendation and possible SF LAFCo action regarding the selection of the consultant for the Sphere of Influence Study
6. Discussion of the processing of the Application for the formation of the San Francisco-Brisbane Municipal Utility District (Shadow MUD)



7. Public Hearing: Discussion and Adoption of Policies and Procedures for General Operations of SF LAFCo (Continued from May 18, 2001)
8. Public Hearing: Discussion and Adoption of Policies and Procedures to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by members, staff or consultants of the SF LAFCo. Government Code Section 56300(c). (Continued from May 18, 2001)
9. Discussion and Possible Action on a Resolution appointing the San Francisco City Attorney as Legal Counsel for the San Francisco Local Agency Formation Commission (Continued from May 18, 2001)
10. Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utility Commission and other agencies (Continued from May 18, 2001; Discussion Item)
11. Discussion on Supervisors Newsom and Hall's Resolution requesting the San Francisco Local Agency Formation Commission to assist the Board of Supervisors with a full analysis of public power options and conservation/energy efficiency measures so that the Board may use this information to determine the best way of providing reliable, cost effective, environmentally responsible electric service to San Francisco (Continued from May 18, 2001)
12. Discussion and Possible Action of the University of San Francisco's Internship Program (Continued from May 18, 2001)
13. Discussion and Possible Action on the Legislative Report on pending legislation of interest to SF LAFCo
  - AB 47 (Wiggins) – Municipal Utility Districts: Public Agencies
  - AB 793 (Cox) – Municipal Utility Districts: Purchases
  - AB 948 (Kelley) – Local Agency Formation
  - AB 1495 (Cox) – Local Agency Formation
14. Public Comment for Items not on the Agenda
15. Future Agenda Items
16. Adjournment





## IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCO, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCO members. Any written comments should be sent to: Committee Clerk of LAFCO, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments, which cannot be delivered to the Committee Clerk by that time, may be taken directly to the hearing at the location above.

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**MINUTES**

**Special Meeting  
Friday, July 27, 2001, 2:00 p.m.  
City Hall, Room 263**

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano and McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Monica Fish

**SPECIAL AGENDA**

(There will be public comment on each item)

**1. Call to Order and Roll Call**

The meeting was called to order by Chair Eisenberg at 2:08 p.m.

Members Present: Commissioners McGoldrick, Gonzalez and Chair Eisenberg  
Member Absent: Commissioner Ammiano

Chair Eisenberg asked the Executive Officer to state the composition of the Commission at this time.

Gloria L. Young, Executive Officer stated that the members currently are Chairperson Eisenberg, Commissioners McGoldrick and Ammiano and Alternate Commissioner Gonzalez. There have been resignations by Commissioners Daly and Maxwell. Commissioner Gonzalez is being recommended to fill the regular seat on LAFCo. The Board of Supervisors will hear this issue after the charter amendments are complete. At the time of Commissioner Gonzalez's appointment, the Commission would be without an alternate member.

Chair Eisenberg asked the Executive Officer if the Commission has a quorum today because there are three out of four members present.

Gloria L. Young, Executive Officer stated that three members would constitute a quorum.

2. Approval of Minutes of the previous meetings from March 1, March 6, April 5, and May 18, 2001

No Public Comment.

Chair Eisenberg moved to approve the Minutes from the March 1, March 6, April 5, and May 18, 2001 meetings; Commissioner McGoldrick seconded.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: March 1, March 6, April 5 and May 18, 2001 meeting Minutes approved without objection.

3. Discussion of Contribution Limits for Candidates for the Municipal Utility District

Dorji Roberts, Deputy City Attorney stated that the Commission asked if contribution limits could be imposed upon candidates for the proposed Municipal Utility District that is on the ballot. He advised that this Commission does not have authority to impose contribution limits for MUD candidates. State law governs this issue, which requires certain disclosures of contributions, but there are no limitations.

Gloria L. Young, Executive Officer stated that Supervisor Hall introduced a Resolution urging the candidates for the Board of Directors of the proposed MUD to adopt voluntary contribution limits. The Board approved the Resolution on June 4, 2001.

Public Comment

Bernie Choden stated that he is a candidate for District 2 of the Municipal Utility District. He thinks a voluntary contribution limit of \$1000 is fair.

Public Comment Closed

4. Discussion of a Sphere of Influence for the City and County of San Francisco

Gloria L. Young, Executive Officer stated that the City and County of San Francisco is required to adopt a Sphere of Influence in order to comply with the consideration of the application of the Board of Supervisors for the Shadow MUD. She recommends that SF LAFCo adopt the current City and County's General Plan that was adopted by the Board of Supervisors and is on file in her office. It seems

logical that the same plan is adopted since the boundaries are contiguous and it is the simplest, easiest, and most expeditious. SF LAFCo has the ability to adopt its own Sphere of Influence, but it would take a lot of time because it includes a number of elements. She will come back to the Commission with the application, recommendation, and General Plan at a future hearing so it can be adopted. A motion and hearing would be made at that time. She will talk more about this item when the Shadow MUD is discussed in Item 6.

Chair Eisenberg stated that Item 5 has to do with the selection of a consultant for the Sphere of Influence Study, and Item 4 refers to a Sphere of Influence Study also. He asked the Executive Officer to explain the difference between the two Sphere of Influence Studies.

Gloria L. Young, Executive Officer stated that the Sphere of Influence in Item 4 is a more comprehensive one than required as a part of the Cortese-Knox-Hertzberg Act. The Act requires that any jurisdiction that has an application before the LAFCo needs to have an adopted Sphere of Influence. The City and County of San Francisco does not have a Sphere of Influence. The Sphere of Influence Study that is identified as Item 5 is for the selection of a consultant to work on the options associated with providing public power in the City and County of San Francisco.

No Public Comment

Public Comment Closed

5. SF LAFCo Subcommittee Recommendation and possible SF LAFCo action regarding the selection of the consultant for the Sphere of Influence Study

Commissioner McGoldrick asked if the Commission, when no action is taken on items, is supposed to say "Continued to the Call of the Chair" as part of official parliamentary status

Gloria L. Young, Executive Officer stated that is the procedure followed by the Board of Supervisors, but SF LAFCo is within their rights to follow their own procedure.

Commissioner McGoldrick stated that he wants to make sure the Commission can bring a particular item back when the action stated is "Continued to the Call of the Chair."

Chair Eisenberg stated that discussion items can be placed on the agenda at any time, and there is no point in continuing them.

Gloria L. Young, Executive Officer stated that the SF LAFCo Subcommittee interviewed the consultants at the Subcommittee Meeting of July 13, 2001, and recommended the selection of E. J. Simpson, Utility Consultant.



Chair Eisenberg asked the Executive Officer to read into the record the letter received by Project Design Consultants, the consultants who were not selected.

Gloria L. Young, Executive Officer read the letter from Project Design Consultants written by Richard Miller, Vice President, thanking the Commission for the interview, acknowledging Mr. Simpson's experience, and offering their services in the future.

Chair Eisenberg stated there were two candidates interviewed by the Subcommittee to do the scope of work for the Sphere of Influence Study. One candidate was E. J. Simpson, Utility Consultant, and the other candidate was Project Design Consultants. There were a variety of differences in both applications. The Executive Officer pointed out that there were incomplete matters with respect to both applications. Mr. Simpson did not specify a completion date, but stated that he would comply with the direction of the Executive Officer, who indicated that the desired completion date would be October 2. In addition, Mr. Simpson's application did not directly respond to questions involving the specific aspect of the Sphere of Influence and instead chose to say who in his organization would be dealing with those specific aspects of the Sphere of Influence. However, in his presentation, he did discuss what he would be doing with respect to the specific tasks.

Project Design's application had a key problem in that they left their bid open ended in two respects. One, they said they would be relying on LAFCo staff, and the Executive Officer pointed out that she has no staff that they could rely on. Two, the exact cost of their bid was not specified. They estimated that it could be \$5000 to \$10,000 more, and they refused to give the Commission a specific price.

A discussion was held about opening the bid up to further bidders because only two bids were received on time. It was pointed out that if this were to happen, it would not be possible to complete this Sphere of Influence Study prior to the election. The Subcommittee considered that to be a crucial point. It was decided that the problems with Mr. Simpson's bid were solved because he said he would comply with the October 2 completion date, and he specified what he would do with respect to the Sphere of Influence during the interview.

The discussion of the Subcommittee revolved around the qualifications of Mr. Simpson and Project Design. Project Design Consultants acknowledged in their letter that Mr. Simpson had unique experience within the electrical utility industry that they did not have. Mr. Simpson told the Commission that he had been a manager of PG&E for twenty-five years and had direct experience with creating Municipal Utility Districts and Public Utility Districts in Redding and other areas. Project Design stated that they had no direct experience with the tasks the Commission was looking for. The Subcommittee concluded that Mr. Simpson was more qualified for this particular Sphere of Influence. It was acknowledged that Project Design Consultants is an expert in LAFCo Sphere of Influence Studies overall. They were invited to come back and bid again in the second phase of the

Sphere of Influence in the event that LAFCo decides that more work had to be done. It was noted that neither of the bids provided cost analysis for detailed accounting. Mr. Simpson stated that in the event that he had to do further energy cost analysis, he would subcontract with a nationally prominent accounting firm that was familiar with energy questions. At the inception, they were advised by the Executive Officer that this Sphere of Influence could cost \$400,000. Mr. Simpson's bid was \$90,000 and Project Design's was \$110,000.

Gloria L. Young, Executive Officer stated that she does not recall stating \$400,000, but she recalls an amount of \$200,000. Mr. Simpson and Project Design's bids, as stated by the Chair are correct.

Chair Eisenberg stated that the Subcommittee scored in favor of Mr. Simpson because he (1) was the low bidder (2) had expertise in the direct tasks that the Commission was looking for (3) gave a precise bid amount, and (4) gave a direct completion date. The Subcommittee recommended E. J. Simpson, Utility Consultant to the full Commission.

#### Public Comment

John Kaufman, representing the Coalition for Affordable Public Services stated that the Coalition strongly objects to the selection of Mr. Simpson. The LAFCo is a public agency that needs to be neutral and to make sure that an objective study will be done, and that is not the case. The Commission should have gone back to get bids if they felt that the two bids received were not qualified. Mr. Simpson has a long record of being outspoken and partisan on the issue of a Municipal Utility District, which is the subject matter of his study. According to numerous articles in the press, he has spoken out in favor of this measure and has represented the campaign in favor of this measure in public meetings. Mr. Simpson had formed the MUD concept that was later adopted into a ballot measure. It is clear that this is not an objective selection by the Commission. If this agency makes an endorsement, the public trust must be upheld. By selecting Mr. Simpson, the Commission is not upholding the public trust and selecting someone whom has a stated biased public view on this matter. He is shocked and surprised with the actions that the Subcommittee has taken and presumably the Commission will be taking if Mr. Simpson is selected. He stated that he has nothing against Mr. Simpson personally, and he is entitled to his point of view. However, he should not be selected to conduct an objective third-party study that is paid for by a public agency.

Commissioner Gonzalez asked Mr. Kaufman for clarification as to his association.

John Kaufman stated that he is associated with the Coalition for Affordable Public Services dually registered as a campaign committee with the State of California and the City and County of San Francisco on the Municipal Utility District measure. The Coalition has been in existence for approximately a year.

Chair Eisenberg asked Mr. Kaufman if he is an attorney.

John Kaufman stated that he is not an attorney and is not speaking from a legal point of view, but is speaking from a public policy point of view. When you have a public agency and that public agency is hiring a consultant to do a study, you need an objective third party, not a partisan.

Commissioner Gonzalez asked Mr. Kaufman if the Coalition for Affordable Public Services was established primarily to deal with the MUD measure that will be on the ballot in San Francisco.

John Kaufman stated that was correct.

Richard Ow stated that he attended many of the workshops Mr. Simpson has conducted and feels he is objective. As a result, he now has a clear idea on the subject of electric lines and the generation of electricity. The way to obtain a lower rate is through public-owned power. His meetings are held in the Union Hall in the CLUB (the Committee to Lower Utility Bills) and in other neighborhoods. He urges the Commission to assign Mr. Simpson to the job. After reading Mr. Simpson's objective report, the voters can render a fair decision in the November election on the San Francisco MUD.

Bernie Choden stated that he is pleased by the scope of work for the Sphere of Influence Study and with the selection of Mr. Simpson. However, he believes this project is too inexpensive and recommends a reserve account attached to the contract. There are contingencies and Mr. Simpson has narrowed it down to the least possible cost. He recommended an evaluation committee of expertise such as Dr. Price of PUC or the Women's Energy Association, people who are engaged in large-scale contractual consultancies on this subject to make sure this is an objective study, to vouch for the contingencies, and to expedite the study. He does not think it should be left up to the expertise of the Commissioners.

Chair Eisenberg stated that there is a potential of a reserve of approximately \$400,000, and the Commission contemplates more steps to complete the study. The Commission will first review this report, which will be done by October 2 and then go into detailed cost analysis, as it has another \$300,000 to work with.

Public Comment Closed

Chair Eisenberg asked the Executive Officer to state for the public what was done to pre-qualify both candidates to see if they have the proper public power credentials. A question was raised as to whether the selected candidate was qualified.

Gloria L. Young, Executive Officer stated that she did not go through the pre-qualifying process before the consultant was selected. Qualifications would be checked after selection and the contractual process was underway.

The Executive Officer stated that SF LAFCo approved the scope of work for the Sphere of Influence at their May 18, 2001 meeting. The Request for Proposal (RFP) was published in the San Francisco Independent on May 26, 2001. The Clerk's Office received approximately twenty-six requests for proposals, and they sent those out. In addition, the RFP was made available on the web and posted. The deadline for prospective consultants to provide their proposals was on Monday, June 25, 2001. Two proposals were received by the timeframe and reviewed. The Commission received her recommendation at the July 13 Subcommittee meeting.

Chair Eisenberg stated that he was delighted to receive the letter from Project Design Consultants, as he was impressed with their qualifications. The Subcommittee decided that the two bidding parties had different types of expertise. The Commission may want to use Project Design Consultant's expertise in the future, and they were invited to come back into the bidding process, which they acknowledged in their letter. There was a dramatic difference between the two bidders. It is unusual to receive a letter from one bidder saying that they are sure that the other bidder is qualified and will do a good job, and that is what they got from Project Design. He stated that there was acknowledgement at the Subcommittee meeting that Mr. Simpson's experience with public power was crucial in the determination. The RFP process was an open and fair one. Had there been other consultants that wanted to bid, they had ample opportunity. There were no objections to the bidding process. The competing bidder indicated that they are interested in participating at a later date.

Commissioner McGoldrick moved that the Commission accept the recommendation of the Subcommittee and select E. J. Simpson, Utility Consultant, for the Sphere of Influence Study; Chair Eisenberg seconded.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: SF LAFCo has selected E. J. Simpson as the consultant for the Sphere of Influence Study.

Chair Eisenberg advised Mr. Simpson that the Commission would expect the report no later than October 2 at 5:00 p.m.

E. J. Simpson thanked the Commission and assured that the report will be presented on time, in a form that is easily understood, with the information that has been requested.



6. Discussion of the processing of the Application for the formation of the San Francisco-Brisbane Municipal Utility District (Shadow MUD)

Gloria L. Young, Executive Officer stated that on February 23, 2001, LAFCo received a Motion from the Board of Supervisors requesting that it consider a proposed formation of a MUD District in San Francisco and Brisbane. Supervisor Gonzalez introduced the Motion, which the Board adopted, and he spoke before LAFCo on March 1, 2001.

The Board of Supervisors application for the MUD is currently being reviewed. She would refer to her March 27 letter to the Board President, Tom Ammiano that indicates that in accordance with Government Code Section 56658, as the Executive Officer, she is responsible for determining whether the Board's application is complete.

The Executive Officer stated that she had worked with other agencies to pull together the recommended documentation that SF LAFCo needs in order to hear this item and to complete the application. The recommended documentation includes (1) the Sphere of Influence from the City of Brisbane (received from the County of San Mateo), (2) a General Plan for the City and County of San Francisco (which she discussed with respect to the Commission approving the Sphere of Influence Study), (3) a Certificate of Determination of an Environmental Review (received from the Planning Department), and (4) the legal description and the map of the City (received). When this item is brought back to the Commission, the Commission will be asked to approve the Sphere of Influence for the City and County of San Francisco. It is her understanding that Chair Eisenberg plans to introduce a Resolution that would affect this item.

Dorji Roberts, Deputy City Attorney stated that he was not sure whether Chair Eisenberg would be introducing his Resolution today. If so, he does have copies for members of the public and the Commissioners. The Commission previously adopted Procedures for the Evaluation of Proposals for the Formation of Districts that are initiated by governmental entities. Those procedures set forth two alternatives, (1) for districts initiated by governmental entities that specify the service that will be provided by the proposed district, and (2) an expedited process by which proposals for formation of districts that do not specify the service that will be provided. For the latter there are certain determinations that this Commission must make under the Cortese-Knox-Hertzberg Act and certain requirements that need to be included in the application, specifically a plan for how to provide services. The expedited process would authorize this Commission to defer some of the determinations until such time as a district is formed and comes back to the Commission for approval to provide a particular service.

Chair Eisenberg asked that his proposed Resolution be passed out and made available to the public.

Dorji Roberts, Deputy City Attorney stated that in the event the Commissioners had questions, he did bring additional copies of the procedures for the formation of district proposals.

Chair Eisenberg stated that the Resolution of how the Commission would process the Shadow MUD was developed in conjunction with the Deputy City Attorney. When the Shadow MUD was first introduced, the Commission was operating on unknown terrain in terms of how legislative areas worked. After discussions with the City Attorney, it was determined that the LAFCo could modify the Shadow MUD. The timing is such that if the MUD petition on the November ballot would fail, he thinks it would be possible to do the things that are necessary to put this particular MUD petition on the ballot by March. Rather than delay the fleshing out of the proposal, he asked the City Attorney to prepare this Resolution, which is a modification of the proposal. LAFCo has the power to modify a proposal and approve it. It's Commissioner Gonzalez's Motion that was set forth by the Board of Supervisors, so he will have something to say about it. The Commission does want to initiate the process and discussion today.

Commissioner McGoldrick asked if Chair Eisenberg's Resolution should be heard at a future date because it was presented today, and under the Sunshine Ordinance and Brown Act that the Commission has adopted, the Resolution was not made available to the public 72 hours before the hearing.

Chair Eisenberg stated that no action is being taken on this item so the Commission is acting in accordance with the Sunshine Ordinance and Brown Act. The only point of discussing the Resolution now is to get a sense of the Commission as to whether it should move forward in this direction. All that is needed today is a discussion and public comment.

Dorji Roberts, Deputy City Attorney stated that this item is on the agenda for a discussion only of the processing of the Shadow MUD. There could be no action taken on this item.

Commissioner McGoldrick asked if members of the public were aware of the nature of the Resolution before the Commission today as a result of the advertisement that was on the agenda.

Dorji Roberts, Deputy City Attorney stated that the agenda specified that there would be discussion of how to process the Shadow MUD. Not all explanatory documents necessarily have to be available to the public in the agenda packet. It just depends whether it is reasonably described in the agenda, so that persons would know to inquire or to attend the meeting.

Commissioner McGoldrick asked if the Commission indicated to go in a certain direction, if that would constitute an action under parliamentary procedures of the Brown Act and Sunshine Ordinance.



Dorji Roberts, Deputy City Attorney stated that the Commission could discuss in general terms what the approach of the Commission would be, but no formal action could be taken on this Resolution to modify the application that has been submitted to LAFCo. That would have to occur at a later meeting.

#### Public Comment

John Kaufman asked what the purpose of this Resolution is since there is a Resolution that has already been approved by the Commission and the Supervisors and will be on the ballot this fall. What is the Commission's concern that has prompted this Resolution?

Chair Eisenberg stated that this Resolution is a separate petition. There are two petitions that were forwarded to LAFCo. One will be on the ballot in November. The second is Commissioner Gonzalez's Shadow MUD and is a totally separate item that has been pending before the Commission, but for technical reasons had to comply with the application provisions of the Cortese-Knox-Hertzberg law. The Executive Officer has advised the Commission that those steps have been complied with. The question is if it is the sense of this Commission after taking public comment, whether the Commission should proceed with the Shadow MUD or flesh it out pursuant to provisions of the Cortese-Knox-Hertzberg Act.

John Kaufman stated that he was not sure if he understood what was stated. There is a measure on the ballot that would set up a MUD with a broader scope than the Shadow MUD, and the scope of the original measure also includes electricity. What is the feeling about why this Resolution for the Shadow MUD is necessary?

Chair Eisenberg advised Mr. Kaufman to wait for Commission discussion.

Paul Goerke stated that he is pleased that the Commission is taking auxiliary steps that will help to make the MUD a reality. He has wondered what other steps might be taken by the Board of Supervisors to make it easier to pass this measure in November. Possibly enforcing the Raker Act could be an auxiliary step in supporting the MUD.

#### Public Comment Closed

Chair Eisenberg stated that it is the advice of the City Attorney that it might be more expeditious to proceed in this manner. The Resolution is not an attempt to detract from Commissioner Gonzalez's petition--it is an attempt to expedite it. Since there is no objection, he will state an intention to introduce this matter at the next meeting pursuant to the Sunshine Ordinance and Brown Act.

**ACTION:** Call of the Chair to continue this item to the next meeting for adoption and discussion of the Resolution directing that the Proposal to form a Municipal

Utility District (MUD) initiated by the Board of Supervisors of the City and County of San Francisco be (1) modified by the Commission to specify that the proposed MUD shall provide electric service, and (2) processed in accordance with Part II of the Commission's Procedures for the Evaluation of Proposals for the Formation of Districts Initiated by Government Entities.

7. Public Hearing: Discussion and Adoption of Policies and Procedures for General Operations of SF LAFCo (Continued from May 18, 2001)

Dorji Roberts, Deputy City Attorney stated that at the May 18, 2001 meeting, the Commission directed that there be changes made to the General Policies and Procedures. He has made those changes in accordance with the Commission's direction and has the corrected copies available. The changes were to (1) remove the provision in Section 1.25 that said that alternate Commissioners would not routinely sit in closed sessions, (2) add Room 263 where this Commission normally meets, and (3) surplus language at the end of the document that referred to definitions contained in the Cortese-Knox-Hertzberg legislation.

Commissioner Eisenberg asked if since the Policies and Procedures are made available at this time, and in order to comply with the Sunshine Ordinance and Brown Act, whether this item should be continued to the next meeting.

Dorji Roberts, Deputy City Attorney stated that the Commission could act on the Policies and Procedures at this time. The only changes were the corrections made at the last meeting, which was properly noticed. There were no changes other than those and it was continued to today's meeting.

No Public Comment

Public Comment Closed

Commissioner McGoldrick moved to adopt the Policies and Procedures; Chair Eisenberg seconded.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: The Policies and Procedures for General Operations of SF LAFCo were adopted without objection.

8. Public Hearing: Discussion and Adoption of Policies and Procedures to Require Lobbying Disclosure and Reporting Requirements for Persons who Attempt to Influence Pending Decisions by Members, Staff or Consultants of the SF LAFCo. Government Code Section 56300(c). (Continued from May 18, 2001)

Gloria L. Young, Executive Officer stated that at the May 18, 2001 meeting, the Commission directed that the Executive Officer prepare Policies and Procedures to Require Lobbying Disclosures. Those procedures are before the Commission today for approval. The forms are similar to those used by the Fair Political Practices Commission. Once the Policies and Procedures are approved, they will be available on the web and distributed as indicated in the Policies and Procedures to the Commission, the Director of Elections, and the Board of Supervisors.

No Public Comment

Public Comment Closed

Commissioner McGoldrick moved to adopt the Policies and Procedures to Require Lobbying Disclosures. Chair Eisenberg seconded.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: Policies and Procedures to Require Lobbying Disclosure and Reporting Requirements for Persons who Attempt to Influence Pending Decisions by Members, Staff or Consultants of the SF LAFCo was adopted with no objection.

9. Discussion and Possible Action on a Resolution Appointing the San Francisco City Attorney as Legal Counsel for the San Francisco Local Agency Formation Commission (Continued from May 18, 2001)

Dorji Roberts, Deputy City Attorney stated that correspondence was received from City Attorney, Louise Renne, on this matter.

Chair Eisenberg asked if City Attorney Louise Renne's letter is available to the public.

Dorji Roberts, Deputy City Attorney stated that there were two letters--one dated June 15 that was in the packet and a July 23 letter that is available to the public.

Public Comment

Richard Ow stated that because of the City Attorney, the San Francisco voters were not able to vote on a MUD in last November's election. If the election were held, San Francisco citizens would not have had to pay a 50% increase in electrical bill rates. The City Attorney's position is not a comfort for the citizens of San Francisco. He urges the Commission to appoint an independent attorney so that the attorney's only objective is for the full benefit of the San Francisco electric bill payers.

Bernie Choden stated that the county is an administrative district of the state. The Commission should not want to have a City Attorney as a counsel for a county operation. However, he has been impressed as to the integrity of the counsel.

#### Public Comment Closed

Commissioner McGoldrick stated that given the message in the letter dated July 23, 2001, the City Attorney is an unwilling counsel. The Commission does not want to have an unwilling legal counsel as representation. He suggested that the Executive Officer calendar an item as soon as possible to seek independent outside counsel other than the City Attorney.

Chair Eisenberg stated that the City Attorney could have responded by giving the Commission an economic disclosure. There are numerous rules and procedures that have been set forth by the State Bar that could have been complied with. However, the City Attorney has provided the Commission with an excellent Deputy, Mr. Roberts, who is doing a substantial amount of work and is essential to the functioning of this Commission. He believes that Mr. Mihaly, who is outside counsel would charge approximately \$400 an hour and inside counsel would be approximately \$200 an hour. In discussion with Ms. Young, she feels comfortable working with the City Attorney and is worried what would happen if the Commission would have to go to an outside law firm every time things needed to be checked as to form. The preference would be to go back to the City Attorney and ask her if she would consider creating a firewall between herself and Mr. Roberts and to prepare a waiver of conflict of interest.

Commissioner Gonzalez stated that the Commission would essentially be asking the City Attorney to concede to a conflict to the extent that a firewall is set up. He concurs with the Chair that a question of a conflict was never resolved. The difficulty he had with the response is that it went to the conclusion rather than trying to deal with the direct allegations that were made. He stated that the City Attorney indicated that they do not want to be the Commission's counsel. The Commission should agendaize an item to speak to outside counsel and determine costs.

Chair Eisenberg asked the Deputy City Attorney if the Sunshine Ordinance refers to a firewall.

Dorji Roberts, Deputy City Attorney stated that the Sunshine Ordinance specifies that the Deputy City Attorney assigned to the Sunshine Ordinance Task Force shall be walled off from others in the office that provide Sunshine advice. Ethical and due process walls have been created in the past.

Commissioner Gonzalez asked if there has been a firewall created in the City Attorney's Office if there was no conflict determined to exist.



Dorji Roberts, Deputy City Attorney stated that he was unaware of a firewall being created if no conflict exists.

Commissioner McGoldrick asked the Deputy City Attorney for the foundation or rationale for creating a firewall between the Sunshine Ordinance Task Force and the City Attorney's Office.

Dorji Roberts, Deputy City Attorney referred Commissioner McGoldrick to the people who drafted the Sunshine Ordinance and worked on the campaign to explain the rationale.

Commissioner McGoldrick stated that the City Attorney has indicated in her June 15 letter that she does not now have or ever had a conflict of interest with any legal matter involving PG&E. He believes that if there is another institution that should look into these allegations, they should move to investigate. At the same time, LAFCo can accept on the basis of that statement, that the City Attorney has responded to a request from this body.

Commissioner Eisenberg stated that there is a standard provision in a civil settlement that says if there is settlement, there is no admission. There is a dispute and both sides decide to resolve the matter in an amiable fashion. He is not asking for a concession by the City Attorney that there is a conflict. He is asking her to accept that there is a problem and resolve this matter without an admission of a conflict. The City Attorney should recognize that if she doesn't have a conflict, there is an appearance of a conflict. Under those circumstances, it would make sense to create a firewall.

Commissioner Gonzalez stated that it is not bad if there is a conflict. The only problem would be a conflict that is not dealt with appropriately. Previously, the Commission requested that the City Attorney respond to serious allegations. The response received is not adequate and he is not prepared to waive the discussion of whether or not the conflict exists. He thinks the City Attorney has made it clear that she does not want to represent the LAFCo. From her point of view, she could believe that there is no conflict and not want to work with this body because of the manner that the entire subject was approached. He recommended continuing the matter and meeting with the City Attorney. He would not be supportive of a civil settlement because the allegations are too strong.

Chair Eisenberg stated that he would like to continue the matter and meet with the City Attorney to resolve the matter.

Gloria L. Young, Executive Officer stated that the Commissioners should continue this matter to a meeting as soon as possible. There are immediate needs to develop a contract with E. J. Simpson. An attorney will need to review the contract before it is signed and delivered so the work can begin August 27, as outlined in the Request for Proposal. In reply to Chair Eisenberg's request for what the City

Attorney and independent counsel is charging for their services—records since October indicate \$100 - \$137 an hour for the City Attorney. The hundreds of hours that LAFCo has used has completed the \$100,000 in the budget for the fiscal year. The Executive Officer stated she would check the record to see what Mr. Mihaly, independent counsel, charges, but approximated several hundred dollars per hour.

Chair Eisenberg stated he thought it was \$400 per hour.

Commissioner McGoldrick recommended that the Executive Officer prepare a Request for Qualifications (RFQ) immediately in order to take bids and select outside qualified counsel other than the City Attorney's office, if required.

Gloria L. Young, Executive Officer stated that she would prepare an RFQ. It would be an instrument that would not be prepared by the City Attorney's office.

Commissioner McGoldrick asked if the Commission could embark upon an employment relationship on an interim basis with qualified legal counsel, such as Mr. Mihaly.

Gloria L. Young, Executive Officer stated that she would request at the next meeting that the Commission give the Executive Officer the authority to solicit attorney support.

Commissioner Eisenberg stated that the recommendation was to meet with the City Attorney between now and the next LAFCo meeting. He asked Commissioner Gonzalez for direction as to the specific issues to be discussed at the meeting.

Commissioner Gonzalez recommended that the Commission obtain a response to specific allegations of conflict, substantive and specific responses so the Commission can get beyond that issue to determine whether there is a need for a firewall or whether outside counsel is needed.

Gloria L. Young, Executive Officer recommended that a Subcommittee be set up to work on this issue before the next meeting.

Dorji Roberts, Deputy City Attorney stated that a three-member committee would constitute a quorum of a Commission, so it would have to be noticed as both a meeting of the LAFCo and the Subcommittee of LAFCo.

Commissioner McGoldrick asked if the Subcommittee would have to meet with the participation of the public and whether it falls under the areas of the Brown Act and Sunshine Ordinance. Would the Commission be able to go into a closed session to discuss this sensitive topic?



Dorji Roberts, Deputy City Attorney stated that under the Brown Act, unless a specific exemption applies that allows you to go into closed session, you would have to conduct the Subcommittee meeting as a public meeting as noticed.

Commissioner McGoldrick stated that the Commission is under the presumption that the City Attorney would willingly come into a discussion on this matter. Could the City Attorney legally choose not to appear at the session?

Dorji Roberts, Deputy City Attorney stated that he does not know what her response would be.

Commissioner McGoldrick recommended that one member of the Commission attend the meeting.

Commissioner Gonzalez stated that the City Attorney's failure to appear would be a strong concession of a conflict. She is saying she does not have a conflict so she needs to be there to interact with the Subcommittee.

Commissioner McGoldrick recommended that a diplomatic course should be followed, and that one member of this Commission and the Executive Officer meet with the City Attorney.

Chair Eisenberg stated it is the consensus of the Commission that the Chair and the Executive Officer would meet with the City Attorney's Office instead of using the Subcommittee process to resolve the matter. If the issue cannot be resolved, he will report back at the next meeting. In the meantime, a RFQ will be developed by the Executive Officer.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: Continued to the next regular meeting without objection. In the interim, the Chair and the Executive Officer will attempt to meet with the City Attorney's Office to review the matter, and the Executive Officer will prepare a Request for Qualifications for Legal Counsel.

10. Discussion: Chairperson Eisenberg's request for a discussion of SF LAFCo's ability to request records from the Public Utilities Commission and other agencies (Continued from May 18, 2001)

Dorji Roberts, Deputy City Attorney stated that a question was raised whether this Commission has subpoena powers. The discussion is academic at this time because the Commission has not asked for or been denied access to records. He pointed out two provisions of the LAFCo-enabling legislation that are set forth in the Cortese-Knox law, specifically: Section 56378 of the Government Code states that

various agencies shall provide the Commission with studies and information that are necessary for the Commission, although it does not specifically reference subpoena power. Their view is that if an agency were to refuse to comply with a proper request, that it would be possible to obtain a court order to compel that production. In addition, Section 56386 provides that officers and employees of a city, county, or special district, including any local agency and various others enumerated in the statute, shall provide the Executive Officer with information that is necessary to assist her or the Commission, including the preparation of Executive Officer reports.

Chair Eisenberg asked the Deputy City Attorney if a court order means a subpoena.

Dorji Roberts, Deputy City Attorney stated that it would not be in the form of a subpoena. If the Commission made a request for records to which the Commission is entitled and if that agency then refused, the request could be enforced by a court order.

Chair Eisenberg asked the Deputy City Attorney if he thinks Section 56386 is enforceable through court order.

Dorji Roberts, Deputy City Attorney stated that it would depend on the facts and circumstances that existed at the time, i.e. was the request made, what was asked for, what was the response of the agency or the particular officials or employees involved? The facts would have to be analyzed to determine whether a court order could be obtained.

Chair Eisenberg asked the Deputy City Attorney if in the event that the Commission asked for records from the Public Utilities Commission and they refused to give the Commission those records, would it be the position of the City Attorney to go to court and obtain an order?

Dorji Roberts, Deputy City Attorney stated that it would depend on what records were asked for. Applicable federal or state laws with respect to exemption from disclosure would have to be reviewed.

Chair Eisenberg asked the Deputy City Attorney if he would submit his opinion in writing.

Dorji Roberts, Deputy City Attorney agreed.

Chair Eisenberg stated that the Deputy City Attorney's opinion is valuable to the proceedings of this Commission. This Commission may ask for the records of the Public Utilities Commission. If the request were not complied with, it would make a big difference if the Commission could obtain a court order.

## Public Comment

Bernie Choden advised the Commission that this would be done under the aegis of the recently approved Sphere of Influence Study. The Commission wants a study in context so that when you ask for information, there is a relationship. Especially since state law empowers LAFCo to address investigations into any City agency within its Sphere of Influence. That is an important precedent. The Commission should require the MUD, once approved, to come back here with regard to efficacy and efficiency provisions. In order to complete that appraisal, the Commission will need that power.

## Public Comment Closed

11. Discussion on Supervisors Newsom and Hall's Resolution requesting the San Francisco Local Agency Formation Commission to assist the Board of Supervisors with a full analysis of public power options and conservation/energy efficiency measures so that the Board may use this information to determine the best way of providing reliable, cost effective, environmentally responsible electric service to San Francisco (Continued from May 18, 2001)

Commissioner McGoldrick asked if this issue was discussed at a Committee or Subcommittee and if a recommendation was set forth.

Commissioner Gonzalez apologized, but stated that he would have to leave the meeting.

## No Public Comment

## Public Comment Closed.

Chair Eisenberg motioned to table this item; Commissioner McGoldrick seconded.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

ACTION: Tabled without objection.

12. Discussion and Possible Action of the University of San Francisco's Internship Program (Continued from May 18, 2001)

ACTION: At the Call of the Chair, continued to the next meeting without objection.

13. Discussion and Possible Action on the Legislative Report on pending legislation of interest to SF LAFCo

AB 47 (Wiggins) – Municipal Utility Districts: Public Agencies  
AB 793 (Cox) – Municipal Utility Districts: Purchases

AB 948 (Kelley) – Local Agency Formation  
AB 1495 (Cox) – Local Agency Formation

ACTION: At the Call of the Chair, continued to the next meeting without objection.

14. Public Comment for Items not on the Agenda

Public Comment

Robert O'Malley, public citizen stated that he is interested in contributing in the formation of committees for Presidio Trust issues. He is not sure if the City has an Advisory Commission at this time. The Presidio Trust discussed issues of traffic because of the planned reconstruction of Doyle Drive in four or five years at a meeting he attended. He recommended that the SF LAFCo could help in gathering environmental impact reports from CALTRANS and Presidio Trust and making informed decisions for the City on Presidio issues.

Public Comment Closed

15. Future Agenda Items

No future agenda items were discussed.

16. Adjournment: The meeting adjourned at 3:49 p.m.



**San Francisco  
Local Agency  
Formation Commission**

City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. 415.554.4441  
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DOCUMENTS DEPT.

AUG - 9 2001

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## **AGENDA**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

### **Special Meeting Friday, August 24, 2001 at 10:00 a.m. City Hall, Room 263**

Chairperson: Eisenberg  
Members: Commissioners Ammiano and McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Monica Fish

#### **SPECIAL AGENDA**

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Approval of Minutes for December 29, 2000 and July 27, 2001 meetings
3. PUBLIC HEARING: Discussion and adoption by SF LAFCo of a Sphere of Influence for the City and County of San Francisco
4. Discussion and adoption of a Resolution directing that the Proposal to form a Municipal Utility District (MUD) initiated by the Board of Supervisors of the City and County of San Francisco be (1) modified by the Commission to specify that the proposed MUD shall provide electric service, and (2) processed in accordance with Part II of the Commission's Procedures for the Evaluation of Proposals for the Formation of Districts Initiated by Government Entities



5. Discussion and authorization of the Executive Officer to contract with legal counsel
6. Discussion of the University of San Francisco's Internship Program (Continued from July 27, 2001)
7. Possible Action: Legislation Report—Report on pending legislation of interest to SF LAFCo (Continued from July 27, 2001)

AB 47 (Wiggins) – Municipal Utility Districts: Public Agencies  
AB 793 (Cox) – Municipal Utility Districts: Purchases  
AB 948 (Kelley) – Local Agency Formation  
AB 1495 (Cox) – Local Agency Formation

8. Public Comment for Items not on the Agenda
9. Future Agenda Items
10. Adjournment

#### IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

### **DISABILITY ACCESS**

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City Hall  
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San Francisco, CA 94102-4689  
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**MINUTES**

**Special Meeting  
Friday, August 24, 2001, 10:00 A.M.  
City Hall, Room 263**

Chairperson: Commissioner Eisenberg  
Members: Commissioners Ammiano and McGoldrick  
Alternate: Commissioner Gonzalez

Clerk: Monica Fish

DOCUMENTS DEPT.

OCT - 2 2001

**SPECIAL AGENDA**

(There will be public comment on each item)

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**1. Call to Order and Roll Call**

The meeting was called to order by Chair Eisenberg at 10:16 a.m. The Commission had been told that Commissioner McGoldrick is on his way and will be present at 11:00 a.m. Commissioner Gonzalez was in attendance and will be available at 11:00 a.m. The Commission will take a recess and reconvene at 11:00 a.m. to obtain a quorum.

The meeting reconvened and was called to order by Chair Eisenberg at 11:15 a.m.

Members Present: Commissioners McGoldrick, Gonzalez and Chair Eisenberg  
Member Absent: Commissioner Ammiano

**2. Approval of Minutes dated December 29, 2000 and July 27, 2001.**

No Public Comment.

Public Comment Closed.



Commissioner McGoldrick moved to approve the Minutes from the December 29, 2000 and July 27, 2001 meetings; Chair Eisenberg seconded.

ROLL CALL VOTE:

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: December 29, 2000 and July 27, 2001 meeting minutes approved without discussion and objection.

3. PUBLIC HEARING: Discussion and adoption by SF LAFCo of a Sphere of Influence for the City and County of San Francisco.

Gloria L. Young, Executive Officer stated that the Commission has before them the staff-report for the approval of a Sphere of Influence for the City and County of San Francisco. Adoption of a Sphere of Influence is required in order for LAFCo to proceed with the application with the Board of Supervisors for a Municipal Utility District, known as the "Shadow MUD." In order to expedite this matter and because the City and County of San Francisco has the same boundaries as the San Francisco General Plan, it is the Executive Officer's recommendation that the Commission adopt the Sphere of Influence as the General Plan. Her recommendations are within the staff report.

No Public Comment.

Public Hearing Closed.

Commissioner Gonzalez stated that as the original sponsor of the "Shadow MUD" provision, he thinks that the very purpose of why they brought the matter forward was to do precisely what has been outlined in this proposal.

Commissioner McGoldrick moved to adopt the Sphere of Influence for the City and County of San Francisco with recommendations as follows:

1. Adopt the General Plan as the Sphere of Influence for the City and County of San Francisco; and
2. Direct the Executive Officer to maintain on file a complete copy of the General Plan/Sphere of Influence for public review; and
3. Proceed with the processing of the application of the Board of Supervisors for the Municipal Utility District.

Chair Eisenberg seconded.





ROLL CALL VOTE:

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: The General Plan as the Sphere of Influence for the City and County of San Francisco was adopted with staff recommendations.

4. Discussion and adoption of a Resolution directing that the Proposal to form a Municipal Utility District (MUD) initiated by the Board of Supervisors of the City and County of San Francisco be (1) modified by the Commission to specify that the proposed MUD shall provide electric service, and (2) processed in accordance with Part II of the Commission's Procedures for the Evaluation of Proposals for the Formation of Districts Initiated by Government Entities.

No Public Comment.

Public Comment Closed.

Commissioner McGoldrick moved to adopt the Resolution; Chair Eisenberg seconded.

Commissioner Gonzalez thanked the Chair for bringing this Resolution forward.

Chair Eisenberg stated that with the adoption of this Resolution, the Commission has created a potential plan in the event that the MUD does not pass in November. This particular MUD proposal is more specific, states specifically that it has to do with electricity, and has more procedures that would be followed than the prior proposal. It doesn't say that the prior proposal is in any way flawed, but this is a different approach that can happen in another election.

ROLL CALL VOTE:

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: Resolution directing that the Proposal to form a Municipal Utility District (MUD) initiated by the Board of Supervisors of the City and County of San Francisco be (1) modified by the Commission to specify that the proposed MUD shall provide electric service, and (2) processed in accordance with Part II of the Commission's Procedures for the Evaluation of Proposals for the Formation of Districts Initiated by Government Entities adopted.



5. Discussion and authorization of the Executive Officer to contract with legal counsel.

Gloria L. Young, Executive Officer asked that the Commission instead of selecting legal counsel as a Subcommittee, direct her as the Executive Officer to review the Request for Qualifications (RFQs) and select legal counsel as soon as possible. The Commission has before them a staff report along with the RFQ that was initiated on August 1, 2001. Two proposals have been received.

No Public Comment.

Public Comment Closed.

Chair Eisenberg stated that the City Attorney would no longer participate in advising this Commission. State law does not give the City Attorney that prerogative as it reads that the City Attorney shall serve as counsel to this Commission. That may raise a series of legal questions. They are without legal counsel to advise the Commission, so the Commission has to proceed with hiring legal counsel to decide whether there are further ramifications of the City Attorney's opinion. With this proposal, the Executive Officer has taken bids and requests for proposals from a number of law firms and suggests that this simply be a staff decision to select the Commission's counsel.

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: The Commission has authorized the Executive Officer to contract with legal counsel.

6. Discussion of the University of San Francisco's Internship Program (Continued from July 27, 2001).

No Public Comment.

Public Comment Closed.

Chair Eisenberg stated that at the beginning of LAFCo's term, he had arranged through a political science professor at the University of San Francisco for a student volunteer. The intern called a number of non-profits for the City to ask them what the effect of the increase in utility bills was. It was so helpful that he talked to the Political Science Department at the University of San Francisco and asked them to provide an intern to every one of the Commissioners. The internship program is starting right now so the Political Science Department would like to know if the Commission is interested. Each Commissioner would choose his own project and would be assigned an intern for six to seven hours a week. As long as the



Commissioner supervises and grades the intern, the intern will receive credit at the end of the semester.

ROLL CALL VOTE:

AYES: Commissioners McGoldrick and Gonzalez and Chair Eisenberg

NOES: None

ACTION: The Commission has agreed to participate in the University of San Francisco's Internship Program.

7. Possible Action: Legislation Report—Report on pending legislation of interest to SF LAFCo (Continued from July 27, 2001).

AB 47 (Wiggins) – Municipal Utility Districts: Public Agencies

AB 793 (Cox) – Municipal Utility Districts: Purchases

AB 948 (Kelley) – Local Agency Formation

AB 1495 (Cox) – Local Agency Formation

Gloria L. Young, Executive Officer stated that this item is for the Commission's information only. She receives information from CALAFCo regarding bills of importance to LAFCo. If the Commission feels it is appropriate, she will continue to place these items on the agenda.

Chair Eisenberg stated that he did not feel this information should be placed on the agenda. The items could be sent out to the Commissioners and if they want to pick something out, then they can do so.

Commissioner Gonzalez stated that he disagreed. He found it helpful and appreciated it done this way.

Commissioner McGoldrick stated that in other Committees and the Transportation Authority, they receive updates on pending legislation and by taking or not taking a position, it would be useful.

Chair Eisenberg asked that a date be included that the Commission's action be required.

Gloria L. Young, Executive Officer stated that these bills are on the floor right now.

Chair Eisenberg stated that this item would be continued to the next meeting.

Commissioner McGoldrick asked for copies of the legislation.





Gloria L. Young, Executive Officer stated that the copies were attached to the May 18 meeting packet when this item was first presented to the Commission.

Commissioner Gonzalez stated that in looking over these items from the legislature, that it would be helpful for the Executive Officer to speak to any specific legislature that the Commission should focus their attention on. When reading these bills, he is not sure whether he wants to weigh in on any of these issues.

No Public Comment.

Public Comment Closed.

8. Public Comment for Items not on the Agenda.

No Public Comment.

Public Comment Closed.

9. Future Agenda Items.

Chair Eisenberg stated that the Commission received a letter from the Coalition for Affordable Public Services and asked staff to refer this letter to our new counsel for review and to bring the item to the next meeting if counsel is prepared to do so. He stated that the next meeting would be in September, and Mr. Simpson's report is due October 2. In order to make sure that the consideration of this letter is not prejudiced, he asked that the next meeting be set before Mr. Simpson's report is due, and that counsel should review this letter prior to the next meeting.

Commissioner Gonzalez asked if there is a requirement that there be only one non-supervisor member on the LAFCo. Do the other LAFCo members have to be members of the Board of Supervisors?

Gloria L. Young, Executive Officer stated that the requirement of the new Cortese-Knox-Hertzberg law calls for one member of the general public. The other members are to be elected officials and appointees of the Board.

Chair Eisenberg stated that LAFCo membership is to consist of four members of the Board of Supervisors and one non-member.

Commissioner McGoldrick asked if the law changed recently because he remembers when Mr. Choden, who is a member of the general public, was a Commissioner.

Gloria L. Young, Executive Officer stated that the rule changed after the first of the year.



Chair Eisenberg asked that staff notify the University of San Francisco Political Science Department that the LAFCo Commission has agreed to institute the internship program and ask the professor if she will attend the next meeting to give a report.

Gloria L. Young, Executive Officer agreed to do so.

10. The meeting adjourned at 11:34 a.m.



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## **AGENDA**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting  
Friday, September 28, 2001 at 4:00 p.m.  
City Hall, Room 263**

Members: Chairperson Eisenberg and Commissioners Ammiano, Gonzalez, and McGoldrick

Clerk: Monica Fish

**SPECIAL AGENDA**  
(There will be public comment on each item)

**DOCUMENTS DEPT.**

1. Call to Order and Roll Call
2. Approval of Minutes of August 24, 2001.
3. CLOSED SESSION

**SEP 26 2001**

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**CONFERENCE WITH CITY ATTORNEY**

Motion that the San Francisco Local Agency Formation Commission convene in closed session under the provisions of Government Code Section 54956.9(a): Winchell Hayward v. San Francisco LAFCO; City and County of San Francisco Case No. 324661, for the purposes of conferring with or receiving advice from legal counsel.



Question: Shall this Motion be ADOPTED?

After a closed session, if one occurs, the Chairperson shall (1) request the Legal Counsel to identify the subjects discussed in the closed session, and (2) direct the Clerk to report the vote taken on any motion in the closed session.

[Elect To Disclose]

Motion that the SF LAFCO finds it is in the public interest to disclose information discussed in closed session, and directs the Chairperson immediately to disclose that information.

[Elect Not to Disclose]

Motion that the SF LAFCO finds that it is in the best interest of the public that the Board elect at this time not to disclose its closed session deliberations concerning the anticipated litigation listed above.

4. Discussion and action on the SF LAFCO Sub-committee recommendation to SF LAFCO to approve notice to E. J. Simpson, Utility Consultant to cease work on the agreement dated August 10, 2001.
5. Discussion and direction to the Executive Officer regarding the termination of the agreement to E. J. Simpson, Utility Consultant, dated August 10, 2001.
6. Discussion and action on a Request for Qualification (RFQ) for consultant(s) to provide data and information to the Commission on public power options.
7. Future Agenda Items
8. Public Comment on Items not on the Agenda
9. Adjournment

IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

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## **MINUTES**

**Special Meeting  
Friday, September 28, 2001, 4:00 p.m.  
City Hall, Room 263**

Chairperson Eisenberg

Members: Commissioners Ammiano, Gonzalez and McGoldrick

Clerk: Monica Fish

### **SPECIAL AGENDA**

(There will be public comment on each item)

#### **1. Call to Order and Roll Call**

The meeting was called to order by Chair Eisenberg at 4:09 p.m.

Members Present: Chair Eisenberg, Commissioners Ammiano, Gonzalez and McGoldrick

Members Absent: None

#### **2. Approval of Minutes dated August 24, 2001**

No Public Comment.

Public Comment Closed.

Chair Eisenberg moved to approve the Minutes from the August 24, 2001 meeting;  
Commissioner McGoldrick seconded.

#### **VOTE:**

AYES: Commissioners Ammiano, Gonzalez and McGoldrick and Chair Eisenberg

NOES: None

ACTION: August 24, 2001 meeting minutes approved without discussion and objection.

### 3. CLOSED SESSION

#### CONFERENCE WITH LEGAL COUNSEL

Motion that the San Francisco Local Agency Formation Commission convene in closed session under the provisions of Government Code Section 54956.9(a): Winchell Hayward v. San Francisco LAFCO; City and County of San Francisco Case No. 324661, for the purposes of conferring with or receiving advice from legal counsel.

Question: Shall this Motion be ADOPTED?

Commissioner Eisenberg asked the Executive Officer how the Commission should proceed.

Gloria L. Young, Executive Officer deferred to Nancy Miller, Esquire, legal counsel for the San Francisco Local Agency Formation Commission.

Nancy Miller, Esquire stated that there should be public comment first and then a motion to adjourn into closed session.

No Public Comment

Public Comment Closed

Commissioner McGoldrick moved to adjourn into closed session; Chair Eisenberg seconded. No discussion was held.

VOTE:

AYES: Commissioners Ammiano, Gonzalez and McGoldrick and Chair Eisenberg

NOES: None

ACTION: Passed to convene into closed session.

After a closed session, if one occurs, the Chairperson shall (1) request the Legal Counsel to identify the subjects discussed in the closed session, and (2) direct the Clerk to report the vote taken on any motion in the closed session.

[Elect To Disclose]

Motion that the SF LAFCO finds it is in the public interest to disclose information discussed in closed session, and directs the Chairperson immediately to disclose that information.

[Elect Not to Disclose]

Motion that the SF LAFCO finds that it is in the best interest of the public that the Board elect at this time not to disclose its closed session deliberations concerning the anticipated litigation listed above.

Meeting of the San Francisco Local Agency Formation Commission reconvened.

Nancy Miller, Esquire stated that the San Francisco Local Agency Formation Commission did meet in closed session on the matter regarding the Winchell Hayward v. San Francisco LAFCo and City and County of San Francisco matter. She recommended that the Commission entertain a motion that it is in the best interest of the public that the Commission elects not to disclose the deliberations that were taken in closed session.

Commissioner McGoldrick motioned not to disclose the deliberations that were taken in closed session; Commissioner Ammiano seconded.

Chair Eisenberg stated that he was not in favor of the motion to elect not to disclose the deliberations because he believes this Commission has adopted a policy of abiding by the Sunshine Ordinance, and he thinks the matters that were discussed should be publicly disclosed.

Commissioner McGoldrick asked if the Commission is required to disclose deliberations taken under closed session under the Sunshine Ordinance.

Nancy Miller, Esquire stated that the Commission is not required to disclose deliberations taken in closed session under the Sunshine Ordinance.

VOTE:

AYES: Commissioners Ammiano, Gonzalez and McGoldrick

NOE: Chair Eisenberg

ACTION: Passed to elect not to disclose closed session deliberations.

4. Discussion and action on the SF LAFCO Sub-committee recommendation to SF LAFCO to approve notice to E. J. Simpson, Utility Consultant to cease work on the agreement dated August 10, 2001.



Gloria L. Young, Executive Officer stated that the Subcommittee at its meeting of September 21, 2001, elected to recommend to the San Francisco Local Agency Formation Commission to approve notice to E. J. Simpson, Utility Consultant to cease work on the agreement dated August 10, 2001, as of Monday, September 17, 2001.

E. J. Simpson, Utility Consultant provided a copy of the Sphere of Influence Study to the Commission. He stated that he was authorized to start work on August 27 to respond to LAFCO's wish for a Sphere of Influence Study that would assess San Francisco's energy demand and resources. At the end of approximately three weeks, the information that he supplied to Gloria L. Young did not appear to her to be satisfactory. He was asked to cease work and that further payment for work completed would be in jeopardy. Because of the Commission's confidence in awarding him the contract, he completed the contract. He stated that the Commission now has before them a Sphere of Influence contract that was issued by the SF LAFCo. Twenty-three specific items have been responded to professionally, documented as accurate, and it is a report that he is proud of. To finish the Sphere of Influence, it would be necessary to document the services that the City of San Francisco and Brisbane provides. The LAFCo law changed on January 1. If this document was accepted and someone was authorized to do the additional work in documenting the services in San Francisco and Brisbane, the Commission would have a Sphere of Influence study. He does have ten more days before this document is due. If he is permitted to continue, that work could be completed. He stated that he appreciated LAFCO's confidence in him, is familiar with this work, and offers his apologies that he did not correspond and communicate properly with staff that was doing their best to do a good job.

No further Public Comment.

Commissioner McGoldrick asked if the document that Mr. Simpson handed to the Commission is to be accepted as an official document for use by the SF LAFCo.

Nancy Miller, Esquire, stated that Mr. Simpson was provided with written notice to cease work on the contract, and he was advised that any additional work that he performed would be at his own risk. The document he turned in is a public document, but not a LAFCo document.

Commissioner McGoldrick asked the Executive Officer if there is official language required in order to move on this item.

Gloria L. Young, Executive Officer stated that the recommendation is written as Item Number 4 as a Sub-committee recommendation to SF LAFCO to approve notice to E. J. Simpson, Utility Consultant to cease work on the agreement dated August 10, 2001.

Commissioner McGoldrick moved to approve recommendation to the San Francisco Local Agency Formation Commission to approve notice to E. J. Simpson, Utility Consultant to cease work on the agreement dated August 10, 2001; Commissioner Ammiano seconded.

VOTE:

AYES: Commissioners Ammiano, Gonzalez and McGoldrick

NOES: None

ABSTAIN: Commissioner Eisenberg

ACTION: Passed.

Commissioner McGoldrick asked if an abstention is an allowable vote under the Commission rules.

Nancy Miller, Esquire, legal counsel stated that the Commission adheres to Roberts Rules of Order that allows abstention.

5. Discussion and direction to the Executive Officer regarding the termination of the agreement to E. J. Simpson, Utility Consultant, dated August 10, 2001

Gloria L. Young, Executive Officer stated that the termination language in the contract reads as follows:

"LAFCo shall have the option in its sole discretion to terminate this agreement at any time during the term hereof for convenience and without cause. LAFCo shall exercise this option by giving contract or written notice of termination. The notice shall specify the date on which the termination shall become effective."

To this date, there has not been a report that she as the Executive Officer has accepted in accordance with this agreement.

No Public Comment

Public Comment Closed

Commissioner McGoldrick asked the Executive Officer if there is language that the Clerk recommends to enter into the record.

Gloria L. Young, Executive Officer stated that the Commission would approve a motion to terminate the agreement.

Commissioner McGoldrick moved to terminate the agreement with Mr. E. J. Simpson, Utility Consultant, dated August 10, 2001; Commissioner Ammiano seconded.

VOTE:

AYES: Commissioners Ammiano, Gonzalez and McGoldrick

NOES: None

ABSTAIN: Commissioner Eisenberg

ACTION: Passed.

6. Discussion and action on a Request for Qualification (RFQ) for consultant(s) to provide data and information to the Commission on public power options.

Gloria L. Young, Executive Officer stated that at the Subcommittee Meeting of September 21, 2001, she was directed to issue RFQ's and to contact consultants to provide data and information to the Commission on public power options. She has not issued an RFQ at this time. As an alternative the Commission may wish to consider, rather than having a full request for consultants, is to limit the scope and to identify consultants that could provide information on issues related to the forming of an electric-MUD or other alternatives. The other possibility would be to set up public hearings before the LAFCo to provide for an opportunity to have experts in the field come in and present information, an opportunity for questions and answers, and to provide a record for this Commission.

Donald Maynor, Esquire, legal counsel stated that he thinks the Commission can generate a great deal of information by limiting the broad scope of some of these issues and to develop some of the expertise that is out there. He has seen hearings of this nature occur at the CPUC. If it is necessary to draw more information on specific areas, the Commission can give specific requests to consultants.

Chair Eisenberg asked how the Commission could go about formulating the process in the next month.

Donald Maynor suggested that Ms. Young be directed to come back in a reasonable time period to identify a proposal, how to do that in terms of conducting hearings, and what the issues might be. Ms. Young with the advice of counsel could put together what the scope of the issues might be and if it is the Commission's desire, they could suggest experts that might be invited.

Chair Eisenberg asked if Mr. Maynor is recommending that Ms. Young come back at the next meeting and provide the Commission with an issues scope and asked if other Commissions have followed this process throughout the state.

Donald Maynor, Esquire stated that the CPUC has conducted this kind of process in the past and he has been a participant. It produces a lot of information that the staff can consolidate. If additional information is needed in certain areas, special assignments can be made to focus on those issues.

Chair Eisenberg stated that Mr. Simpson has turned in a 100-page report and asked why Mr. Maynor's process would be a better process than doing an immediate Request for Qualifications and asking someone to take Mr. Simpson's draft that has been provided to the Commission, take out whatever is objectionable or might not be appropriate to form, and to build on this draft and determine whether or not the mission can be completed by October 15. He asked why the issues scoping process would be better than determining whether or not Mr. Simpson has complied with the Commission's process. He has provided the Commission with a document and perhaps someone else can come in and work on it.

Donald Maynor, Esquire, legal counsel stated that he is not going to comment on something he has not read, but stated that the scope of the issues were extremely broad. If it were his process, he would greatly reduce the scope of the information. He is aware that East Bay MUD is conducting hearings on similar types of issues. He has been through a similar process with the CPUC and has seen information developed in a short amount of time. There are a number of activities that a SMUD gets involved in. You can bring in experts from SMUD, people that are interested in distributed generation, and experts on conservation. There will be an opportunity to hear from people on both sides of the issue. His concern is that the scope is so broad now, it would take a long time to complete.

Chair Eisenberg stated that if they had a City Attorney that wanted to cooperate with the Commission a couple of months ago, instead of wanting to fire the Commission, this exact process could have been recommended a couple of months ago. He asked if the alternative discussed is one that Mr. Maynor recommends.

Donald Maynor, Esquire, stated that he does recommend this alternative.

Commissioner McGoldrick asked when the Commission would meet again to discuss these issues.

Gloria L. Young, Executive Officer stated that she would have staff poll the Commissioners and attorneys for a meeting date the week of October 8<sup>th</sup> to discuss finalizing the plans to look at a document that limits the scope of services. One of the Commission's previous members, Supervisor Maxwell, had asked about this opportunity and received a memo regarding an energy summit. The conference that the Executive Officer attended in April had a number of consultants that talked



about the advantages and disadvantages. She stated she was in concurrence with Mr. Maynor's recommendation.

Chair Eisenberg asked if they should proceed to direct the Executive Officer to set a meeting and provide the Commission with a report that is designed to scope the issues that were originally contemplated in the Sphere of Influence Report.

Donald Maynor, Esquire, legal counsel stated that it would be the Executive Officer's recommendation of the issues that were initially addressed in the hearing process.

#### Public Comment

Don Eichelberger, Coalition for Lower Utility Bills, the organization that sponsored the fall ballot to establish the MUD. He has been listening to the last three items and has not been in a position to attend the previous meetings. He did not know that Mr. Simpson's work was being questioned or otherwise dismissed. This Board has spent several months setting what he thought was the scope of what needed to be evaluated and done. Election Day is approaching and they anticipate having access to the information to utilize in their work to convince the public of the concerns about costs and benefits of the Municipal Utility District. He stated that he was concerned about the timing of the process. How is this going to effect a yes or no vote in the election? Will there be an opportunity for the MUD directors to move forward in establishing a MUD? He thinks having a panel of experts together to talk about things is a good idea. However, since this work has been done by E. J. Simpson, he agrees with Chair Eisenberg's suggestion of having it peer reviewed by another consultant to look at the issues that have been brought forward in the report.

Commissioner Gonzalez stated that the MUD measure went to the ballot and there was quite a bit of dispute about what work had to be put in the measure before the voters were able to vote on it. There were a number of people who believed that even if the measure passes, the measure would have to go back to the voters for greater specificity. As he understands it, the reason why this process was continued at the LAFCo was because of the "shadow MUD" provision that allowed the LAFCo to continue to do the work on the MUD petition. He does not think anybody anticipated a particular timeline for when that work would have to be done. The most important thing is that it be done in a way that everyone is satisfied.

Don Eichelberger stated that his concern is that this appointed board is usurping some of the authority of the to be elected MUD Board to do some of these studies and evaluation.

Commissioner Gonzalez stated that if that is true, it is his fault because he was the one that initiated the "shadow MUD" provision. If they had not done that, there would not be any work happening in this LAFCo related to MUD. The motivation for

doing that was to deal with the concerns that were brought forward that the work would have to be done before you would have a MUD that would engage in electricity in San Francisco.

Don Eichelberger is questioning why E. J. Simpson's work is seen as not appropriate to the goals of the "shadow MUD" initiative.

Commissioner Gonzalez stated that sometimes certain requests or requirements are not fulfilled.

Don Eichelberger recommended following Chair Eisenberg's suggestion to have another consultant peer review Mr. Simpson's report and identify the problems and then move onto public hearings instead of starting all over again.

James Sutton, Coalition for Affordable Public Services stated that the lawsuit that is currently pending is about the taxpayer dollars that this Commission in the City and County of San Francisco were ready to spend on what they allege as an illegal campaign purpose. It is a clear statement of the law that tax payer dollars cannot be used to promote either side of a ballot measure. He would want to caution the Commission, after listening to this conversation about the proposed energy summit or forum, that the same precept that says this Commission in the City and County of San Francisco can't spend money on a report that will be used to influence voters in the election would apply equally to any kind of summit and the advertising around that summit and any money spent on consultants or reports involving that summit.

Commissioner Gonzalez stated that the problem he is having with Mr. Sutton's argument is that he is reading the law in a strict way. As LAFCo continues to do its work, it may stumble across the truth and benefits of public power that may hurt Mr. Sutton's client, but he can't see that any court in the United States can say that is a violation of what Mr. Sutton is suggesting.

James Sutton referred to a legal case in which it is stated that if a City or County of public entity is going to spend money to give information to voters about a ballot measure, it has to be neutral and show both sides of a ballot measure.

Commissioner Gonzalez stated that the Commission is not entering into arrangements to promote a ballot measure. The Commission is trying to do work on what may become a reality here in San Francisco.

James Sutton stated that when the Chair of this Commission says that this report is needed by October 10 so it can be given to the voters, then the Commission is not in the business of simply doing an Impartial Analysis authorized by the LAFCo law.

Commissioner Gonzalez stated that is a statement of one member of the Commission and is not a quorum of this LAFCo. He does not think that the



Commission would any more demand a report before the election then to delay the report because the findings of any study would hurt Mr. Sutton's client.

James Sutton stated that he found it interesting that Commissioner Gonzalez is assuming that this report is going to hurt the interests of their campaign committee. It is interesting that it is being assumed that this supposedly neutral analysis is going to come out a certain way.

Commissioner Gonzalez is presenting this assumption because he knows that Mr. Sutton is here as a paid advocate for a particular side. It is the same point that he made to Mr. Eichelberger, who is on the other side. They are not going to help a particular side of the measure.

James Sutton stated that he knows that the City Attorney's Office has consistently given advice to Commissions not relevant to LAFCo, that once a measure has been put on a ballot, even if it is a measure that the Commission initiated, at that point that Commission cannot put it on the agenda, cannot have public hearings, cannot have reports, public forums or summits.

Commissioner Gonzalez stated that the Commission is working on a separate MUD measure that was not voter initiated but got here from the Board of Supervisors. Otherwise, the point Mr. Sutton is making would have been a good one.

#### Public Comment Closed

Chair Eisenberg moved that this Commission direct Ms. Young to report back at the next Regular Meeting on the scope of issues specified in the previously requested Sphere of Influence Study, scope the issues, and that she proceed as requested in the last Committee Meeting to issue a Request for Qualifications to obtain a consultant to proceed with the Sphere of Influence Study; Commissioner McGoldrick seconded.

Gloria L. Young, Executive Officer stated that she understands that the Commission would like her to return with the original Sphere of Influence and do a revised scoping. The second recommendation would be to immediately issue a RFQ for a revised Sphere of Influence Study with the scoping of issues. She asked whether the Commission needed to review the issues scoping before the RFQ is issued.

Chair Eisenberg stated that he wanted to proceed with Mr. Maynor's process and with another process to proceed in a way to get the most available information to the public as soon as possible. He restated that the Commission wants to scope down the Sphere of Influence; the Executive Officer's report is to be presented at the next meeting, and that the Request for Qualifications is to be sent out and based on the Executive Officer's scoped down Sphere of Influence.

Commissioner McGoldrick asked if the Chair is asking the Executive Officer to move forward without the ascent of this Commission. He thinks the Executive Officer should bring something back to the Commission in terms of what is a condensed version and that it should be reviewed in public.

Chair Eisenberg stated that the scope could be submitted to the Subcommittee so the Subcommittee could give her guidance.

Gloria L. Young, Executive Officer asked if the Commission is asking for a Subcommittee meeting sometime next week to review the scoped down Sphere of Influence, as it would appear in the RFQ.

Commissioner McGoldrick stated that he would prefer the full Commission's input.

Chair Eisenberg stated that if they were to have a Committee meeting and then a full Commission meeting, that the process would be derailed. Ms. Young could work with the attorney to scale down the issues and issue an RFQ. He stated that he would accept an amendment to the motion that a Committee of this Commission would be appointed by the Chair by any two members who want to be on the Committee. He will appoint a Committee of any two Commissioners that want to appear and then proceed with the next Regular Meeting in which the RFQ and the scoping have been issued. The motion is amended to include a Committee review prior to the next regular Commission meeting and that Ms. Young will work with the Committee to scope out the issues.

Commissioner McGoldrick suggested a three-person Committee that would be a quorum of this Commission.

Chair Eisenberg stated that the three LAFCo Commissioners have volunteered and that the Committee would be comprised of Commissioners McGoldrick, Ammiano, and Gonzalez.

VOTE:

AYES: Commissioners Ammiano, Gonzalez and McGoldrick and  
Chair Eisenberg

NOES: None

ACTION: Passed.

## 7. Future Agenda Items

Glória L. Young, Executive Officer stated that future agenda items would consist of items discussed today. She is working with the attorney, Nancy Miller, in terms of

bringing a resolution before the Commission that sets out a relationship between this Commission and the Board of Supervisors with respect to reserves.

Chair Eisenberg stated that state law provides for an annual Election of Officers and asked to place the item on a future agenda.

8. Public Comment on Items not on the Agenda

No Public Comment

9. Adjournment

The meeting adjourned at 6:08 p.m.

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Formation Commission

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AGENDA  
LOCAL AGENCY FORMATION COMMISSION AND  
SUBCOMMITTEE

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

Special Meeting  
Friday, October 5, 2001 at 9:00 a.m.  
City Hall, Legislative Chambers, 2<sup>nd</sup> Floor

Members: Chairperson Eisenberg and Commissioners Ammiano, Gonzalez, and McGoldrick

Clerk: Monica Fish

SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Approval of Minutes of the Subcommittee Meeting of September 21, 2001.
3. Discussion and direction to the Executive Officer on scoping of issues for a Request for Qualification (RFQ) for consultant(s) to provide data and information to the Commission on public power options, including scheduling possible hearings at the San Francisco Local Agency Formation Commission on public power options.
4. Future Agenda Items
5. Public Comment on Items not on the Agenda
6. Adjournment

## IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

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## MINUTES

Local Agency Formation Commission  
and Subcommittee Meeting  
Friday, October 5, 2001 at 9:00 a.m.  
City Hall, Room 263

Chairperson Eisenberg

Members: Commissioners Ammiano, Gonzalez and McGoldrick

Clerk: Monica Fish

### SPECIAL AGENDA

(There will be public comment on each item)

#### 1. Call to Order and Roll Call

The meeting was called to order by Commissioner Ammiano at 9:08 a.m.

Members Present: Commissioners Ammiano, Gonzalez and McGoldrick

Members Absent: None

Commissioner Gonzalez stated that since Chair Eisenberg is not a member of the Subcommittee it is not necessary to call his name for roll call.

Gloria L. Young, Executive Officer stated that since there is a majority of the LAFCo Commission present for the Subcommittee meeting, staff was required to advertise the meeting as both a Commission and Subcommittee meeting. However, only the three Subcommittee member names had to be announced for roll call.

Commissioner Ammiano stated that he would be the interim chair for today's Subcommittee meeting.



2. Approval of Subcommittee Meeting Minutes dated September 21, 2001.

Commissioner Ammiano moved to approve the September 21, 2001 meeting minutes; Commissioner Gonzalez seconded. No objection.

Public Comment

No Public Comment

3. Discussion and direction to the Executive Officer on scoping of issues for a Request for Qualification (RFQ) for consultant(s) to provide data and information to the Commission on public power options, including scheduling possible hearings at the San Francisco Local Agency Formation Commission on public power options.

Gloria L. Young, Executive Officer stated that per the Commission's request at the LAFCo hearing of September 28, 2001, the Commission has before them a Request for Qualifications for an energy consultant(s) as well as the previous Sphere of Influence Request for Analysis which was adopted by the LAFCo Commission on May 18, 2001. The Commission also requested that a limited Sphere of Influence be prepared for review and indicated that at this meeting there would be discussion as to whether or not SF LAFCo would hire consultants, hold public hearings, or a combination of both. Donald Maynor, Esquire, will discuss the limited scoping of issues.

Donald Maynor, Esquire, stated that he had a list of more efficient rescoped SF LAFCO MUD Study Issues. A public hearing is suggested that is more of a public process where the Commission would invite experts to discuss various issues. PG&E and others would have an opportunity to give their point of view as well. The process would produce information in a timely manner, but the speakers would be centered on the issues outlined on the list.

SF LAFCo MUD Study Issues Items I and II would be the first phase in identifying and distinguishing the advantages and benefits of a Municipal Utility District versus being served by PG&E. Persons with expertise in this area would be invited to public hearings to address specific questions to help identify the differences between these entities. Part of the process is to find out what PG&E's plans are for the future. There is a lot going on at the Public Utilities Commission (PUC). He thinks it is important that PG&E answers certain questions about their future plans in the areas of generation and what the PUC intends for them to do as a utility in the future.

Item IIA2 discusses generation options for a Municipal Utility District. To what extent is San Francisco interested in pursuing renewable resources? To what extent does San Francisco want to avoid being involved in nuclear power? People from Municipal Utility Districts or Municipal Utilities can talk about what some of those options were in the past and may mean in the future. Item IIA3 asks what the

constraints of financing on PG&E are today. They are in a bankruptcy proceeding—compare that with the options using public financing.

Item IIB--how important is conservation? There are a lot of people in this area who could give insights on PG&E's conservation programs, the types of programs allowed by the PUC, and who can compare these programs with other municipal utilities. A discussion can be held regarding past and future programs. Item IIC, Undergrounding of electric lines--PG&E's program today is shut down as far as finance and underground programs. He does not know if that is important to San Francisco. A Municipal Utility may be more aggressive in this area. You are trying to identify a number of aspects that may be important to San Francisco in having a Municipal Utility or Municipal Utility District versus being served by PG&E. Item IID would be to compare operational expenses of a Municipal Utility District such as a SMUD. The Commission will get a sense of the differences between a Municipal Utility versus an investor-owned utility.

Mr. Maynor stated that he thinks the information presented by experts in this area will provide the Commission with balanced information because there will be an opportunity to get input from PG&E and the California Public Utilities Commission. Various experts should be contacted to determine their availability and to determine the logical sequencing of the hearings. As the information comes in, they may include written responses to questions the Commission may have. Staff members could summarize the information for the Commission to base future decisions.

Item III involves technical investigations that he suggests would not be susceptible to the public hearing process, but would be a study that could be done by an outside consultant. Items I and II could be the first phase, and then Item III would be the second phase that would contain a more technical study. Many issues from the original proposal were left off because they involved too many technical issues that were more in the nature of implementation. You would want to investigate issues such as existing contracts and the Raker Act when a decision has been made about becoming a Municipal Utility, as these issues would not be beneficial at an early stage.

Commissioner McGoldrick asked if Item IIIA4 "MUD's capability of meeting future demand" would be better if it were completed when a decision is made as to whether or not the Commission should go with a MUD.

Mr. Maynor stated that he is looking for a pre-formation analysis as to what decisions are important in whether to become a Municipal Utility District and then what the implementation issues are. Sometimes the implementation issues involve a lot of technical analysis and involves different types of options. A technical analysis would be required if you want to take over the entire distribution process of PG&E. There may be a number of implementation options that should be considered by the MUD if it were to be formed. To ask someone to try and figure out all those options and begin developing analysis is asking too much. As far as future

demand, there is a lot of that information available from the Energy Commission and submittals at the PUC. It may not be necessary to have that information done today. After conducting hearings on Items I and II, the Commission may conclude that they may want information on Item III. Roman Numerals I and II would be the scoping for the public hearings and Roman Numeral III would be a technical study by a consultant. The timing would be dependent upon the Commission's judgement as to when it is needed. He is not sure how much of that technical information is needed under the LAFCo law for a Sphere of Influence Study--it might be a study that LAFCo counsel says is needed. However, he is not sure it needs to be as technical as the original study intends to be.

Commissioner McGoldrick asked about the required timeline for Items I and II.

Mr. Maynor stated that the beginning point for the Commission would be to direct staff to contact people with expertise in these areas and find out their availability for a hearing. Then a determination would be made as to how to logically group the issues and then schedule hearings.

Commissioner McGoldrick stated that he was in favor of this option.

Ms. Young stated that she has begun to contact potential speakers that have been discussed by legal counsel. The timeframe was the end of October or the first of November.

Commissioner McGoldrick asked who the typical invitees would be.

Ms. Young stated that she has spoken to the Utility Director for the City of Palo Alto, and his availability is the end of October, first of November. He will be at the ABAG Conference that she will be attending on October 18 and 19 doing similar kinds of presentations about energy. She has also spoken to a number of other utility directors in the Bay Area, and their availability is the end of October, beginning of November. Nancy Miller, legal counsel has contacted SMUD and they have indicated they would be available, as well as David Freeman from Los Angeles.

Commissioner McGoldrick asked if we would need to remunerate for expenses.

Ms. Young stated that the Bay Area speakers would probably not have to be remunerated. SMUD is in Sacramento. She is not sure about David Freeman from Los Angeles—his airfare and accommodations would probably have to be paid for.

Commissioner Ammiano stated that there is an election coming up, and the LAFCO members are hoping it is a positive outcome for public power. If that doesn't happen, where does that leave LAFCo? Hoping that the outcome is positive, what is there left for LAFCo to do?

Mr. Maynor stated that he does not have the answer today. The question is what happens after the election either way.

Ms. Young stated that the Commission would still have the "Shadow MUD," and there would be a determination whether it would continue to be processed. If in fact the "MUD" passes in the November election, MUD would have to come back to LAFCo with a plan to indicate what services they were going to provide and how. The LAFCo Commission is required to review the plan. Those two areas are what was determined by the City Attorney's Office as to why there would still need to be a LAFCo. After that, it would be up to the Commission and the Board.

Commissioner McGoldrick stated that paying speaker's expenses should be left up to the Executive Officer.

Ms. Young stated that if that was the direction of the Subcommittee today, a resolution would be brought back to discuss LAFCo's relationship with the Board of Supervisors with respect to reserves at a future meeting. There are existing issues associated with the budget so that she could get direction from the Commission to divert funds toward the payment for incidentals, if in fact speakers require airfare, etc.

Commissioner McGoldrick asked how extensive the hearings would get, and whether they would have to reimburse people thousands of dollars.

Ms. Young stated that it would be for incidentals. The question is whether or not it is in the hands of staff to put together the presentations, or as Mr. Maynor discussed, have someone help facilitate those hearings. An amount of money would have to be paid to facilitate those discussions.

Commissioner Ammiano stated that other Supervisors are being asked if they are interested in being on LAFCo. He knows that scheduling is difficult--he has MTC and Golden Gate Bridge meetings on Friday. Schedules have to be looked at to find out what might work for current and future members.

Ms. Young stated that there have been a number of suggestions that are being pursued.

Commissioner McGoldrick stated that his understanding, based on recommendations from legal counsel, is that the Commission would hold off on Item III and just go with the public hearings for now.

Mr. Maynor stated that there may be a need to have a small contract with one or more consultants for the purpose of getting more information in a particular area. It may not be appropriate to expect your invited speakers to provide all of the information, so there may be information that may be derived from a SMUD or a PUC. They have a consultant that is familiar with how to pull that information out.



The Commission might ask the Executive Officer to enter into small contracts to gather that information. Performing a detailed study is not recommended at this time.

Commissioner McGoldrick stated that the Commission was going to agree on a condensed version for a scope for an RFQ. He asked whether the Commission should hold off at this time.

Mr. Maynor stated that if the Commission approves Roman Numerals I and II, the issues would be placed in the RFQ. Then a response from experts would be requested in any of these areas. The Commission or Ms. Young would then call on the expertise if the need came up.

Public Comment

No Public Comment

ACTION: Commissioner McGoldrick moved to proceed with the recommendation that the legal counsel and the Executive Officer have set forth today; Commissioner Ammiano seconded. No objection.

#### 4. Future Agenda Items

Commissioner McGoldrick stated that he would like to schedule another closed session.

Gloria L. Young, Executive Officer stated that a closed session is scheduled for the October 12 meeting.

Commissioner Gonzalez stated to Mr. Maynor that the LAFCo did forward the MUD petition to the full Board to be placed on the ballot. Some of the Commissioners that made the decision sit on the Board of Supervisors and in their own individual manner have endorsed that measure or the charter amendment measure that deals with public power. As yet, the Supervisors sit here in a different capacity as the LAFCo. He requested that at the next meeting, Mr. Maynor or legal counsel make a few remarks about the nature of their role as the LAFCo as it relates to the November and March elections.

#### 5. Public Comment on Items not on the Agenda

No Public Comment.

#### 6. Adjournment: The meeting adjourned at 9:34 a.m.

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**AGENDA**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting  
Friday, November 16, 2001 at 2:00 p.m.  
City Hall, Room 263**

Members: Chairperson Eisenberg and Commissioners Ammiano, Gonzalez,  
and McGoldrick

DOCUMENTS DEPT.

Clerk: Monica Fish

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**SPECIAL AGENDA**  
(There will be public comment on each item)

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1. Call to Order and Roll Call
2. CLOSED SESSION REGARDING PENDING LITIGATION (Continued from September 28, 2001).

**CONFERENCE WITH LEGAL COUNSEL**

Motion that the San Francisco Local Agency Formation Commission convene in closed session under the provisions of Government Code Section 54956.9(a): Winchell Hayward v. San Francisco LAFCO; City and County of San Francisco Case No. 324661, for the purposes of conferring with or receiving advice from legal counsel.

Question: Shall this Motion be ADOPTED?



After a closed session, if one occurs, the Chairperson shall (1) request the Legal Counsel to identify the subjects discussed in the closed session, and (2) direct the Clerk to report the vote taken on any motion in the closed session.

[Elect To Disclose]

Motion that the SF LAFCO finds it is in the public interest to disclose information discussed in closed session, and directs the Chairperson immediately to disclose that information.

[Elect Not to Disclose]

Motion that the SF LAFCO finds that it is in the best interest of the public that the Board elect at this time not to disclose its closed session deliberations concerning the litigation listed above.

3. Approval of Minutes of the Commission Meeting of September 28, 2001 and Subcommittee/Commission Meeting of October 5, 2001.
4. Election of 2001-2002 Officers for the San Francisco Local Agency Formation Commission (SF LAFCo).
5. Resolution regarding SF LAFCo Budget/Revenue Understanding with the San Francisco City and County.
6. Discussion and action regarding direction to the Executive Officer to reallocate the existing budget to provide for appropriations for consultant services and additional temporary staff support.
7. Recommendation and action regarding the SF LAFCo Subcommittee recommendations on scoping of issues for a Request for Qualification (RFQ) to provide data and information to the Commission on public power options, including scheduling possible hearings at the SF LAFCo on public power options.
8. Recommendation and action regarding direction to the Executive Officer on the selection of a consultant(s) to assist on scoping of issues and providing data to the Commission on public power options including participating in possible hearings at SF LAFCo on public power options.
9. Discussion regarding the nature of the role of the Board of Supervisors and SF LAFCo and how it relates to present and future elections.
10. Future Agenda Items
11. Public Comment on Items not on the Agenda
12. Adjournment

## IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

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**San Francisco  
Local Agency  
Formation Commission**

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**MINUTES**

**Special Meeting  
Friday, November 16, 2001, 2:00 p.m.  
City Hall, Room 263**

Chairperson Eisenberg  
Members: Commissioners Ammiano, Gonzalez and McGoldrick  
Clerk: Monica Fish

**SPECIAL AGENDA**

(There will be public comment on each item)

**1. Call to Order and Roll Call**

The meeting was called to order by Commissioner Ammiano at 2:08 p.m.

Members Present: Commissioners Ammiano, Gonzalez and McGoldrick

Member Absent: Chairperson Eisenberg

**2. CLOSED SESSION REGARDING PENDING LITIGATION (Continued from  
September 28, 2001).**

**PUBLIC COMMENT**

E. J. Simpson, Utility Consultant stated that he entered into an agreement with the San Francisco Local Agency Formation Commission to provide a study in which he was limited to a work time of thirty-three days with a penalty to be issued if the work was not completed in that time. The study started on September 28 in which two people worked for ten days for extended periods of time. Information on the amount of work completed was provided to the Executive Officer, Gloria Young, as the contract called for. On that Friday, at 4:00 p.m., the Executive Officer issued instructions to stop work. He did not stop work, but quit charging for the work. During that time, a certain amount of background work to be used for the total report



was provided, but was not satisfactory for LAFCo to utilize. The total report was finished without charge. Anyone who looks at the total report would understand that the first two weeks of background work was required for what he was doing. He regrets he did not go forward on LAFCo's authority. He did complete the report—a good report that he is proud of. Due to PG& E's litigation and other issues, his work was never used. There may have been others that used the total report. He requests that the invoice that he provided to the Executive Officer be honored and be paid for as the contract calls for.

Public Comment Closed

## CONFERENCE WITH LEGAL COUNSEL

Motion that the San Francisco Local Agency Formation Commission convene in closed session under the provisions of Government Code Section 54956.9(a); Winchell Hayward v. San Francisco LAFCo; City and County of San Francisco Case No. 324661, for the purposes of conferring with or receiving advice from legal counsel.

Question: Shall this Motion be ADOPTED:

Commissioner Ammiano moved to enter into a closed session; Commissioner McGoldrick seconded; No objection.

Closed Session Convened at 2:20 p.m.

Closed Session Adjourned at 2:35 p.m.

Commissioner Ammiano called to order the meeting of the San Francisco Local Agency Formation Commission at 2:40 p.m.

After a closed session, if one occurs, the Chairperson shall (1) request the Legal Counsel to identify the subjects discussed in the closed session, and (2) direct the Clerk to report the vote taken on any motion in the closed session.

[Elect to Disclose]

Motion that the SF LAFCo finds it is in the public interest to disclose information discussed in closed session, and directs the Chairperson immediately to disclose that information.

[Elect Not to Disclose]

Motion that the SF LAFCo finds that it is in the best interest of the public that the Board elect at this time not to disclose its closed session deliberations concerning the litigation listed above.





Commissioner Ammiano moved to elect to disclose that the SF LAFCo finds it is in the public interest to disclose information discussed in closed session. Commissioner McGoldrick seconded; No objection.

Nancy Miller, Esquire stated that the items that were discussed in closed session are as follows:

- Litigation of Winchell Hayward v. San Francisco LAFCo; City and County of San Francisco Case No. 324661 was dismissed without prejudice by the plaintiffs on November 1, 2001.
- The Commission has provided authority to counsel to negotiate with Mr. Simpson regarding the invoice for payment of services, which was a subject matter of the litigation.

No Public Comment

Commissioner Ammiano moved to take the agenda out of order and discuss Agenda Item 9 next. No objection.

3. Discussion regarding the nature of the role of the Board of Supervisors and SF LAFCo and how it relates to present and future elections.

Nancy Miller, Esquire stated that the Chairperson has asked to hear this item first because how the Commission proceeds could potentially affect the rest of the items on the agenda. The question now is how and what the SF LAFCo staff should proceed on given the result of the election. As a state body, the SF LAFCo shall continue to exist statutorily. The policies and procedures provide that SF LAFCo will meet as needed. That also provides for an Executive Officer who will take petitions or requests from the public on matters that have occurred in the past. LAFCo has the power to study issues regarding governmental service. Even though there is not a petition application before the SF LAFCo at this time, there is still the resolution of the Board of Supervisors that was called the "Shadow MUD." The Commission may want to request clarification from the Board of Supervisors on how to proceed, or SFLAFCo may wish to proceed in another manner regarding LAFCo's power to initiate studies regarding governmental services and efficiencies.

Commissioner Ammiano stated that he is not interested in pursuing the "Shadow MUD" further, but feels that LAFCo can pursue feasibility studies about the issues of public power.

Commissioner Gonzalez stated that he feels that feasibility inquiries should contain specificity on what it is that SFLAFCo is interested in pursuing. Simply having an umbrella of public power of a general notion would not be sufficient in his view. The "Shadow MUD" is a completely separate Municipal Utility District measure than the one that went to the ballot. He would be interested in doing the work to pursue the



"Shadow MUD" measure. There may be issues to consider from the election because of the public power nature of the two measures.

Commissioner Ammiano stated that he would like not to pursue the "Shadow MUD" measure, but recommended coming back to the Commission at the next meeting with specificity.

Commissioner Gonzalez asked legal counsel if the recommendation to dismiss the "Shadow MUD" took place, what authority would this body have to engage in a general inquiry on public power.

Nancy Miller, Esquire stated that SF LAFCo has statutory authority to commission studies and look at all kinds of issues related to government services. The "Shadow MUD" does provide some specificity so the Commission would know the studies that would have to be done with the MUD. As for other studies, the Commission would have to provide direction as to what exactly the Commission needs and wants to look at.

Commissioner Gonzalez stated that the Chair should consider that in the event the "Shadow MUD" was terminated, it would raise the larger question at the full Board of Supervisors about the budgetary realities of the SF LAFCo. Supervisor Hall raised this issue before the full Board in his inquiry to the Executive Officer. LAFCo was created for a specific reason to try to meet statutory requirements for the original MUD item that went to the ballot. Dismissing any inquiry of a Municipal Utility District and wanting to use LAFCo solely as a vehicle to engage in an inquiry to public power should come out of the Board of Supervisors because it would be too general in nature.

Commissioner Ammiano concurred and stated that there is merit that the Board of Supervisors could deal with public power issues, whether it is a charter amendment, etc. Even though this LAFCo was technically set up for the implementation of the MUD petition, there is latitude in what a LAFCo can do. He stated that he would like time to consider other ideas and would come back with specific ideas at the next SF LAFCo meeting.

Commissioner Gonzalez stated that there is the Public Utilities and Deregulation Committee at the Board of Supervisors and advantages and disadvantages could be explored.

Commissioner McGoldrick stated that he would like clarification as to what the function of a "Shadow MUD" would be at this time.

Nancy Miller, Esquire clarified that the SF LAFCo had received an application from the Board of Supervisors to create a district so there are certain procedures to be followed if it were to go forward. That means there are certain issues that the



Commission would study in considering a district and the request is still there. The Commission did limit the study area of the "Shadow MUD" to electric power.

Commissioner McGoldrick stated that the Commission could choose not to take action today, convene at another date, and see what else arises from the community. He asked whether the Board of Supervisors would need to reinstate the request. Has the outcome of the election changed anything?

Nancy Miller, legal counsel stated that her analysis is that the application and request from the Board of Supervisors to consider a district is still valid.

#### Public Comment

Bernie Choden stated that as he understands the legislation, SF LAFCo is dealing with a state agency, a county as an administrative district. LAFCo, without the supervisors, can initiate any broad study into efficacy and efficiency. It would be his advice to take on the broad issue of supplying energy as a public good without prejudicing the outcome by stating that public power is the outcome. He suggests that the Commission look at the aspects of the LAFCo law added by Herzberg that gives the Commission the broad mandate to initiate studies.

Nathan Nayman, Committee on Jobs stated that just last week San Francisco and Brisbane voters rejected Measure I, and San Francisco voters rejected Proposition F. The election results demonstrate that there is no public mandate for the municipal takeover of PG &E's distribution system. Conducting studies of how the government should proceed with efforts to take over the utility service lies in the face of the election results. The LAFCo is acting solely as a proponent for a Municipal Utility District, and not necessarily for the taxpayers at this point. San Francisco's Charter, Article 16 and various sections, already allows for the acquisition of public utilities. The Charter indicates that if it is determined the public interest or necessity demands the acquisition, construction or completion of any public utility or utilities by the City and County, or whenever the electors shall petition the Board of Supervisors for the acquisition of any public utility or utilities, the supervisors must procure a report from the Public Utilities Commission (PUC). The PUC is the agency conduct the study. Members of the LAFCo appear to be in violation of the City's Charter if they move forward. The Charter clearly speaks to the City and County of San Francisco, not a MUD running the utilities. Since the public power MUD seems to be the LAFCo's only purpose, and the voters in San Francisco and Brisbane have rejected a MUD, LAFCo should disband--taxpayer money could be used more effectively.

Commissioner Ammiano stated that counsel had addressed those issues.

Nancy Miller, Esquire stated that the speaker is in error on the issue of the PUC report. A report is required before you proceed on an action. That report takes





quite a bit of time from the PUC so LAFCo can be moving forward as the PUC is moving forward.

Winchell Hayward, Committee for Affordable Public Services stated that he hopes that LAFCo will disband. There are many arguments against public power that he and others have enumerated. He worked for Hetch Hetchy for about twenty years in construction and operations and maintenance. He stated that PG &E is a good company and that there has been a vendetta against them. He feels that PG &E should be restored to handling distribution which they have done very well for many years. He recommended not pursuing public power—it is not for San Francisco.

Commissioner Gonzalez stated that LAFCo may have been created for dealing with the purpose of the original MUD petition, but does Mr. Hayward have a quarrel with what counsel is saying that once the LAFCo is created, it could by statute meet and consider other items. Voters may consider an item at future elections that have been considered before. As was the case with the Central Freeway issue that went to the voters two or three times. At this election, voter turnout was very low, and the measure was defeated by a narrow margin. The measures can be improved to allow the voters to reconsider the subject in a separate and distinct measure.

Winchell Hayward stated that his advocacy is stated in the voter's pamphlet. Possibly LAFCo can get into other things. If you hit the voters again and again it could go either way, but he doesn't think the philosophy of doing it this way is a good idea. You would have to supplement the Hetch Hetchy with a lot of generation. Where are you going to put the generation?

Don Casper, Chairman of the San Francisco Republican Party stated that a single-minded pursuit of a Municipal Utility District or a Public Power Agency or public power is a pursuit away from rather than toward the policy of a LAFCo as set forth in the Cortese-Knox Local Government Reorganization Act of 1985, which is the basic statute behind LAFCo. Section 56301 sets forth the purposes of a LAFCo. Among them are discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently providing government services, and encouraging the orderly formation and development of local agencies based on local conditions and circumstances. Clearly among those purposes, only two, efficiently providing government services and encouraging the orderly formation and development of local agencies based on local conditions and circumstances apply to the San Francisco LAFCo. Should a MUD be proposed again, it would have to include another local agency. That other local agency may not be contiguous to the City and County of San Francisco. The chances are it will have to be in San Mateo County. The voters of Brisbane have already overwhelmingly voiced their opposition to a MUD. Voters in San Francisco very narrowly voiced their opposition to a MUD. It seems that should this Commission single mindedly pursue a MUD, that does not make for orderly formation and development of a Local Government Agency because there should be community consensus behind it. There is no community consensus here. On the subject of public power as a whole, the



Cortese-Knox Act also requires that a LAFCo in its study look at whether existing governmental agencies can supply the same service. Another speaker has pointed out that our Charter provides for a mechanism within an existing structure to provide public power. LAFCo should not be focused solely on public power, but rather an orderly provision of government services within the City and County of San Francisco.

Richard Ow stated that he supports the continuation of LAFCo. Last year, 24,000 citizens signed and brought a petition to the Board. LAFCo was created to put the initiative on the ballot to let the people decide. We had eighty years of lousy service from PG &E, and they took advantage of Hetch Hetchy, which was given to the City by an act of Congress. What has happened in the past eighty years of service is higher rates, a sixty percent increase this year. No business, resident, or low-income resident of San Francisco can afford the increase.

Public Comment Closed

4. Approval of Minutes of the Commission Meeting of September 28, 2001 and Subcommittee/Commission Meeting of October 5, 2001.

Commissioner McGoldrick moved to approve the minutes of the Commission Meeting of September 28, 2001 and Subcommittee/Commission Meeting of October 5, 2001; Commissioner Ammiano seconded. No objection.

No Public Comment

5. Election of 2001-2002 Officers for the San Francisco Local Agency Formation Commission (SF LAFCo).

Commissioner Ammiano moved to continue this item; Commissioner McGoldrick seconded. No objection.

No Public Comment

6. Resolution regarding SF LAFCo Budget/Revenue Understanding with the San Francisco City and County.

Commissioner Ammiano moved to continue this item; Commissioner McGoldrick seconded. No objection.

No Public Comment



7. Discussion and action regarding direction to the Executive Officer to reallocate the existing budget to provide for appropriations for consultant services and additional temporary staff support.

Commissioner Ammiano moved to continue this item. No objection.

No Public Comment

8. Recommendation and action regarding the SF LAFCo Subcommittee recommendations on scoping of issues for a Request for Qualification (RFQ) to provide data and information to the Commission on public power options, including scheduling possible hearings at the SF LAFCo on public power options.

Commissioner McGoldrick stated that the Subcommittee does not have sufficient membership to meet. He recommended that the Subcommittee be dissolved, and that the full Commission hear this item.

Gloria L. Young, Executive Officer stated that the Subcommittee was reconfigured to include the three members that are currently here. LAFCo could choose to hear this item by the Subcommittee or as a Commission.

Commissioner Ammiano moved to continue this item; Commissioner McGoldrick seconded. No objection.

No Public Comment

9. Recommendation and action regarding direction to the Executive Officer on the selection of a consultant(s) to assist on scoping of issues and providing data to the Commission on public power options including participating in possible hearings at SF LAFCo on public power options.

Commissioner Ammiano moved to continue this item; No objection.

No Public Comment

#### 10. Future Agenda Items

Commissioner Ammiano stated that with the resignation of the public member to LAFCo, the Commission should address an immediate outreach.

Nancy Miller, Esquire stated that the Commission has a procedure in place for the appointment of a previous public member. The Executive Officer has within her power to initiate the process, so the issue does not have to be placed on the next agenda. She stated that the Commission does not have to meet until January 2002. She would recommend that staff come back with options for the "Shadow MUD" in





terms of what the process would be and recommendations, options, and alternatives. There may be additional agenda items at that time from Commission members.

Commissioner McGoldrick stated that future agenda items may be the reconsideration of the Brisbane/San Francisco connection and the Commission could uncouple that and find other alternatives.

11. Public Comment on Items not on the Agenda

No Public Comment

12. Adjournment.

The meeting of the SF LAFCo Commission adjourned at 3:18 p.m.











